Federal Court Cour fédérale

Date: 20250114

Docket: IMM-3947-23

Citation: 2025 FC 26

Ottawa, Ontario, January 14, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

FOUAD EL SADEK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a 42-year-old stateless Palestinian who is a resident of Lebanon. In January 2022, he received an offer of employment as a heavy duty equipment operator from a general contracting company in Mississauga, Ontario. The applicant then applied for a temporary resident visa and work permit in April 2022. The prospective employer had received

a positive Labour Market Impact Assessment authorizing it to employ a foreign national in the position.

[2] A Senior Immigration Officer with Immigration, Refugees and Citizenship Canada (IRCC) refused the application on March 13, 2023. The decision letter gives three reasons for the refusal: (1) the applicant had been found to be inadmissible to Canada under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) for having misrepresented material facts in his application; (2) the applicant had not established that he would leave Canada at the end of his authorized stay; and (3) the purpose of his visit was not consistent with a temporary stay given the details he had provided in his application.

[3] Despite what is stated in the decision letter, the officer's Global Case Management System (GCMS) notes demonstrate that the sole reason for refusing the application was the applicant's inadmissibility due to misrepresentation. Specifically, the officer found that the applicant had misrepresented his work experience as a heavy duty equipment operator, a relevant fact that could induce an error in the administration of the *IRPA*.

[4] The applicant now applies for judicial review of the officer's decision under subsection 72(1) of the *IRPA*. He submits that the misrepresentation finding was made in breach of the requirements of procedural fairness and that it is unreasonable. As I will explain, I do not agree that the decision is flawed in either of these respects. This application for judicial review must, therefore, be dismissed.

II. BACKGROUND

[5] In support of his work permit application, the applicant provided an undated letter on the letterhead of a company named “El Sadek”, which is the applicant’s family name. The letter was signed by Mona Hassan. It stated that the company had employed the applicant as a heavy duty equipment operator since March 1, 2020. A marriage certificate provided with the application indicated that the applicant and Ms. Hassan are husband and wife.

[6] On May 31, 2022, a locally engaged Arabic speaking staff member at the Canadian Embassy in Beirut contacted the El Sadek company by telephone to verify the information the applicant had provided. GCMS notes of the call state that it was the applicant himself who answered the call. The applicant confirmed that the company is owned by his wife and that it employs him, his brother, his sister, and a fourth person, a friend. When asked what he does with the company, the applicant said he is the manager. When asked to describe his responsibilities, the applicant said he was the supervisor.

[7] The IRCC representative summarized their assessment of the results of this call in the GCMS notes as follows:

> PA [Principal Applicant] registered the business two years back. Doubtful that PA works as a heavy equipment operator, he said he supervises the company only, he did not provide any information on whether this company is operating, he did not advise on whether he is working on the equipment himself or that they have other employees operating this equipment, which might lead us to believe that he registered this business in preparation for the work in CDA [Canada].

[8] On September 1, 2022, the officer reviewed the applicant's documents as well as the information obtained through the May 31, 2022, verification call. The officer's GCMS notes state the following:

> Based on the verification, and the discrepancies between the PA's declarations during that phone call, and the employment letter for El Sadek company, I have concerns that the PA has provided a letter with a fraudulent employment history that is not an accurate reflection of his real work experience and abilities.
>
> I have concerns that the Applicant has provided a fraudulent letter of employment and declaration of employment history to demonstrate their relevant work history. The specific issues with this document are noted in the previous verification notes. I am satisfied that this document is fraudulent and is not an accurate description and attestation of the PA's employment history. The document was found to be fraudulent by phone verification with the company listed on the employment attestation letter.

[9] It is clear from the foregoing that the officer's concern was with respect to the accuracy of the information the applicant provided regarding his work experience as a heavy duty equipment operator, as declared in the employment letter from the El Sadek company.

[10] On September 2, 2022, IRCC sent the applicant a procedural fairness letter. After setting out the requirement under subsection 16(1) of the *IRPA* that 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 evidence and relevant documents that the officer reasonably requires," the letter states the following:

> Specifically, I have concerns that the employment record which you have provided in support of your application is fraudulent. Upon document examination, the proof of employment was found to be fraudulent. Please explain where, how and when this document was obtained and why it was provided with your application.

> Please also explain who helped you prepare and submit your application. If you have used the services of an agent or consultant at any stage of the application please provide their name, company name, contact details including phone number/WhatsApp number, email address, social media address or website information.

[11] The letter then states that, if it is found that the applicant has engaged in misrepresentation in submitting his application for a temporary resident visa and work permit, he may be found inadmissible under paragraph 40(1)(a) of the *IRPA*. This provision as well as subsection 40(2), which states that a person found inadmissible for misrepresentation remains inadmissible for five years, are set out in the letter. The letter concludes by giving the applicant an opportunity to respond to the concerns by no later than September 19, 2022. The letter states that the applicant may "submit any evidence, proof or information" he would like in order to alleviate the concerns.

[12] In response, the immigration consultant who had assisted the applicant with his original application provided a covering letter dated September 19, 2022, along with a package of materials from the applicant. The package included a notarized letter from the applicant dated September 16, 2022, in which he confirmed that all the documents he provided with his application are genuine, including the employment letters. The applicant wrote: "I have been working for all the companies that I listed and all the information on the employment letters is correct." The applicant also provided a certificate of registration for the El Sadek company, dozens of pages of El Sadek stock inventory print-outs for seals, gaskets, washers and the like, and documents relating to his past employment, including his contract of employment with the Dynamica company. Although the employment letter from Dynamica the applicant had provided with his original application stated that the applicant had worked for the company from

August 2010 until January 2020 as a heavy duty equipment operator, according to the contract of employment, the applicant had been hired by Dynamica as director of the sales department commencing on August 1, 2010. The applicant did not comment on this apparent discrepancy.

III. DECISION UNDER REVIEW

[13] As noted above, the officer refused the application because the applicant was found to be inadmissible due to misrepresentation under paragraph 40(1)(a) of the *IRPA*. The officer's reasons for reaching this conclusion are set out in his GCMS notes.

[14] The officer began by observing that, in response to inquiries by IRCC, the applicant had stated that he worked as the supervisor with the El Sadek company. Considering the information obtained through IRCC inquiries along with the information the applicant provided, the officer found that the applicant had "likely worked since 2020 in a family business, and had some experience" in a field related to the proposed employment as a heavy duty equipment operator but "the experience was more that of a sales person selling and renting machinery and parts."

[15] The officer also noted that the information and documents provided in response to the procedural fairness letter included "little evidence that the PA is or has been a 'Heavy Duty Equipment Operator.'" The officer was satisfied on the basis of the applicant's material that "they have a company" (namely, the El Sadek company) but the information did not satisfy him that the applicant "was working as a Heavy Duty Equipment Operator as listed on his employment letter."

[16] The officer also found that "making a declaration of being a 'Heavy Duty Equipment Operator' when your actual duties are that of a manager of a small machinery rental company indicates that there was a clearly false declaration of the job title and duties on the employment letter."

[17] Finally, the officer found that the applicant's work experience was material and relevant to the applicant's eligibility for a temporary resident visa and a work permit. The applicant's inaccurate statements about this therefore constituted misrepresentation within the meaning of paragraph 40(1)(a) of the *IRPA*.

[18] Accordingly, the officer refused the application because the applicant is inadmissible under paragraph 40(1)(a) of the *IRPA*.

IV. ANALYSIS

[19] The applicable standards of review are not in dispute.

[20] To determine whether the requirements of procedural fairness were met, a reviewing court must conduct its own analysis of the process followed by the decision maker and determine for itself whether the process leading to the decision was fair in all the circumstances (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56). Although, strictly speaking, no standard of review is implicated, it has been said that this inquiry is functionally the same as applying a correctness standard (*Canadian Pacific Railway Co*, at

para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[21] The substance of the officer's decision, on the other hand, is reviewed on a reasonableness standard. 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 that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid*.). To establish that the decision should be set aside because it is unreasonable, the applicant must demonstrate that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100).

[22] Looking first at whether the decision was made in breach of the requirements of procedural fairness, it must be said at the outset that the wording of the procedural fairness letter is puzzling given what the officer's concerns were (as recorded in the GCMS notes). The letter states: "Upon document examination, the proof of employment was found to be fraudulent." This suggests that the concern is that the proof of employment is not what it purports to be – a genuine letter from the applicant's employer – as opposed to that the letter from the employer contains inaccurate information. That this is the concern is reinforced by the reference to "document examination," which suggests that there was something suspect about the letter itself. Furthermore, the applicant had submitted several letters as proof of employment and the procedural fairness letter does not say which of these letters had given rise to the concern, even

though the officer's concerns related only to the letter from the El Sadek company. Nevertheless, for the following reasons, the applicant has not persuaded me that the procedural fairness letter was insufficient to ensure that the decision was made fairly.

[23] First, while the officer's concern about the inaccuracy of the information in the El Sadek company's letter could certainly have been expressed more clearly and directly (as it was, for example, in the officer's GCMS notes quoted in paragraph 8, above), I am satisfied that the procedural fairness letter identified the relevant issue with sufficient clarity and particularity for the applicant to have a meaningful opportunity to address it (*Pham v Canada (Citizenship and Immigration)*, 2022 FC 793 at para 32; *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 809 at para 42). The statement that the employment record the applicant had provided had been found to be fraudulent certainly implies that the information in the document is inaccurate.

[24] Second, the applicant's response to the procedural fairness letter demonstrates that he understood the concerns identified in the letter correctly. In his letter dated September 16, 2022, the applicant stated: "All the documents that I have provided are genuine, including the employment letters. I have been working for all the companies that I listed and all the information on the employment letters is correct." Most of the supporting information the applicant provided was directed to establishing that the El Sadek company is a going concern but the applicant also understood that an issue had been raised about the accuracy of the information in the employment letters, including the letter from the El Sadek company. While the information the applicant provided relating to his employment with the Dynamica company was

not responsive to the officer's actual concerns, providing that information did not prevent the applicant from also providing additional information to verify his duties with the El Sadek company, if such information was available to him. In short, while it would have been more helpful if the procedural fairness letter had singled out the letter from the El Sadek company as the focus of the officer's concerns, the failure to do so did not mislead the applicant. Rather, it simply led the applicant to provide more information than he needed to.

[25] Third, the applicant has not presented any evidence on this application for judicial review that he misunderstood the officer's concerns. On the contrary, in his affidavit sworn on July 6, 2023, in support of the present application, the applicant describes the procedural fairness letter as follows: "Prior to refusing my application, the Officer sent me a procedural fairness letter as the Officer was concerned that I did not work as a heavy duty equipment operator." This is an accurate description of the officer's principal concern. Counsel for the applicant suggests that this statement was made with the benefit of hindsight and after the applicant had seen the officer's GCMS notes; however, the affidavit does not say this. In the absence of such evidence, there is no reason to think that the applicant's unqualified and unequivocal statement reflects anything other than what he understood the procedural fairness letter to mean when he received it in September 2022.

[26] Finally, the applicant has not established that there was other evidence or information he would have provided in response to the procedural fairness letter, if only he had understood the officer's concerns correctly. The applicant swore another affidavit in support of this application on June 4, 2024. Attached as an exhibit to this affidavit is an undated letter signed by

Mona Hassan that “confirms” that the applicant works for the El Sadek company as a heavy duty equipment operator. This simply repeats what was said in the original employment letter. It would have done nothing to assuage the officer’s concerns.

[27] In fact, the evidence the applicant has filed on this application seems to undermine his claim to have worked as a heavy duty equipment operator. That evidence suggests that the applicant actually worked in sales for companies that provided parts and service for heavy equipment. For example, in his June 4, 2024, affidavit, the applicant states that he worked as a heavy duty equipment operator with the Dynamica company but he was not able to obtain a letter of reference from the company because he is currently involved in a lawsuit with them. It is difficult to reconcile this statement with the fact that the applicant did provide an employment letter from Dynamica with his original application. In any event, and more to the point, the applicant attached documents relating to the lawsuit as an exhibit to his affidavit. They state that the applicant actually worked for Dynamica as the manager of the sales department. They also show that the litigation relates to the applicant allegedly having breached a non-competition clause in his original employment contract with Dynamica by opening up his own company specializing in the sale of spare parts and repairing heavy machinery after he left his employment with Dynamica. The company in question must be the El Sadek company. If anything, this information, which the applicant does not comment on in his affidavit, confirms the officer’s original concerns about whether the applicant had described his employment with the El Sadek company accurately.

[28] For these reasons, this ground of review must be rejected.

[29] Turning to the substance of the decision, there can be no question that the applicant's claim to have worked as a heavy duty equipment operator with the El Sadek company was a relevant matter given that he was applying for a work permit to perform this very type of work. Nor can there be any question that, if the applicant provided inaccurate information about his work experience, this could induce an error in the administration of the *IRPA*. The only issue is whether the officer reasonably concluded that the applicant provided inaccurate information about his work experience. In my view, he did.

[30] As set out above, the officer's reasons for concluding that the applicant had misrepresented his work experience with the El Sadek company are transparent and intelligible. The officer considered the information before him and made reasonable findings on the basis of that information. In particular, the finding that the applicant's experience with the El Sadek company "was more that of a sales person selling and renting machinery and parts," and not that of a heavy duty equipment operator, was fully supported by the information before the officer, including the information the applicant provided in response to the procedural fairness letter. The officer also reasonably found that, in response to the procedural fairness letter, the applicant had provided "little evidence" that he is or has been a heavy duty equipment operator. If anything, this finding is overly generous.

[31] In short, the officer reasonably concluded that, in light of all the information, the applicant's declaration that he worked as a heavy duty equipment operator with the El Sadek company was "clearly false."

[32] As set out above, the information the officer relied on included the results of the verification call on May 31, 2022. In that call, the applicant had stated that he is the supervisor. He did not say anything about operating heavy duty equipment. The applicant submits that it was unreasonable for the officer to rely on this statement without anyone having spoken to his "immediate supervisor." He even goes so far as to suggest that the person the IRCC representative spoke to "was unaware" of his duties at the company.

[33] This argument is not persuasive. The applicant has not actually denied under oath that he is the person the IRCC representative spoke with on May 31, 2022. Rather, he addresses the matter only obliquely, implying that the representative had spoken to someone else. Nor does he say who the IRCC representative spoke to if it was not him. The applicant's suggestion that the person the IRCC representative spoke with was not aware of his duties is simply too clever by half. In any event, this is new information that was not before the officer when the decision was made. It does not deserve any further consideration.

[34] The information before the officer was that the IRCC representative spoke with the applicant himself. This information stands uncontradicted in this application. It was altogether reasonable for the officer to take the applicant at his word when he described himself as the supervisor and to draw an adverse inference from his failure to mention that he worked as a heavy duty equipment operator.

[35] The applicant submits that it was unreasonable for the officer to focus on his work experience with the El Sadek company given that he had only worked there for a relatively short

period of time and had worked for the Dynamica company for much longer. I do not agree. It was not unreasonable for the officer to focus on the employment with the El Sadek company given that, as the officer pointed out in the decision, it is "the most relevant as it is the most recent period of employment." In any event, if the officer had focused instead on the information relating to the applicant's employment with Dynamica, this would not have assisted the applicant. As discussed above, that information falls well short of establishing that the applicant worked as a heavy duty equipment operator with that company, either.

[36] Finally, the applicant submits that it was unreasonable for the officer to conclude that he would not leave Canada at the end of his authorized stay. However, as already noted, despite what was said in the decision letter, this consideration did not actually figure in the officer's decision.

[37] In sum, the officer reasonably concluded that the applicant had misrepresented his work experience and that this rendered him inadmissible under paragraph 40(1)(a) of the *IRPA*. This, in turn, required that the application for a temporary resident visa and a work permit be refused. The applicant has not established any basis to interfere with the officer's decision.

V. CONCLUSION

[38] For these reasons, the application for judicial review will be dismissed.

[39] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-3947-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3947-23
STYLE OF CAUSE:	FOUAD EL SADEK v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 17, 2024
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JANUARY 14, 2025

APPEARANCES:

Robert Gertler	FOR THE APPLICANT
Jennifer Luu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gertler Law Office Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT