Federal Court Cour fédérale

**Date: 20250103**

**Docket: IMM-7196-23**

**Citation: 2025 FC 23**

**Ottawa, Ontario, January 3, 2025**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**HIMEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Mr. Himel, made an application to work in Canada. The application was refused because an officer at Immigration, Refugees and Citizenship Canada (the "Officer") found he had misrepresented by providing a fraudulent job experience reference letter. Mr. Himel is challenging the refusal on judicial review.

[2] Mr. Himel argues there was no misrepresentation because the information contained in the letter, except the employer's signature, was accurate as established by the subsequent documents he filed confirming this employment. Mr. Himel also argues that the Officer did not consider the documents he submitted in response to the procedural fairness letter and therefore also did not give him a meaningful opportunity to respond.

[3] After carefully reviewing the documents in question and the Officer's reasons, I find that Mr. Himel has not established any sufficiently serious shortcoming in the Officer's decision or that the process followed by the Officer was unfair. I am dismissing the judicial review.

## II. Background to the Work Permit Application

[4] Mr. Himel is a citizen of Bangladesh and has been working in Singapore on a work permit. Mr. Himel received a positive Labour Market Impact Assessment ("LMIA") to work at a company in Canada as a metal fabricator. As part of his work permit application, Mr. Himel provided a letter, dated August 2022, from the managing director of the company of his current employer where he purported to work as a metal fabricator for approximately five years. The letter set out Mr. Himel's duties and salary.

[5] The Officer noted particular similarities in the wording of the job letters from different employers in the Global Case Management System ("GCMS") notes. The Officer then conducted an employment verification with Mr. Himel's most recent employer and was told that "we did not give this letter to him. The signature is not from me".

[6] In January 2023, the Officer sent Mr. Himel a procedural fairness letter, noting their concerns with the employment reference for his current workplace. In response, Mr. Himel admitted that he had not asked his employer for the letter he provided out of fear that he would be deported from Singapore if his current employer learned he was looking for work elsewhere. Mr. Himel explained that his current employer was now aware and provided a letter confirming his employment and describing the same job duties and length of tenure as set out in the previous letter provided. Additionally, Mr. Himel provided the following documents to establish this employment and work experience: employment history document from Ministry of Manpower, S pass with the company name from Ministry of Manpower, IPA with company name from Ministry of Manpower, statutory declaration from supervisor confirming employment and duties, tax document, pay slips from the company and a bank statement noting the company name for salary deposits.

[7] The Officer refused the application in April 2023, finding that the response to the procedural fairness letter had not changed the Officer's view that Mr. Himel had submitted a fraudulent work experience letter and therefore was inadmissible for misrepresentation.

## III. Issues and Standard of Review

[8] Mr. Himel challenges the substance of the Officer's finding that there had been a misrepresentation. The parties agree as do I that I ought to review these issues on the basis of the reasonableness standard. Mr. Himel also raises a procedural fairness argument. The presumption of reasonableness review does not apply to the fairness claim (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 77). Instead, the question I need

to ask is whether the procedure was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

## IV. Analysis

[9] An inadmissibility finding due to misrepresentation has serious consequences for an applicant. It leads to a five-year period of inadmissibility during which they cannot apply for permanent residence and they must obtain Ministerial permission to enter Canada (*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], ss 40(2), 40(3)). This Court has found that, given these severe consequences, findings of misrepresentation must be made on the basis of clear and convincing evidence (*Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16; *Chughtai v Canada (Citizenship and Immigration)*, 2016 FC 416 at para 29), that there is a heightened duty of procedural fairness owed (*Tsang v Canada (Citizenship and Immigration)*, 2024 FC 1941 [*Tsang*] at para 30; *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27), and that the reasons provided must reflect the profound consequences (*Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at para 7; *Vavilov* at para 133).

[10] In order to find a person inadmissible for misrepresentation under paragraph 40(1)(a) of IRPA, an officer must determine first, that there has been a misrepresentation and second, that the misrepresentation was material in that it could induce an error in the administration of IRPA.

[11] Mr. Himel argued that the misrepresentation had not been established because the information in the letter about his employment (length of tenure and job duties) is accurate. I

cannot accept this argument. The Officer had before them the statement from Mr. Himel where he admitted to not seeking the employment letter from his employer because of his fears of losing his employment and immigration status in Singapore. Mr. Himel stated in this letter: “This is why I could not able to get the experience letter from the company before.” Mr. Himel admitted that he had not approached the employer for a reference letter but had produced a letter purportedly signed by this employer with his application. In these circumstances, it is reasonable for the Officer to have found that a misrepresentation occurred by filing a reference letter from an employer that had not been obtained from the employer.

[12] In my view, the point Mr.Himel is making about the accuracy of the details of the reference letter – that he had in fact worked as a metal fabricator – is better framed not as a question about whether a misrepresentation had occurred at all, but whether it was material. I considered this argument as well. The Officer explained that providing a fraudulent reference letter, i.e. one that was not obtained from the employer, could have induced an error in the administration of IRPA. The Officer noted that it was the Applicant’s responsibility to provide authentic and genuine documents and that this document, the employment reference letter, was material is assessing the Applicant’s ability to perform work for which he was applying for a work permit. Considering the Officer’s full reasons and the steps taken on this application, I cannot find that Mr. Himel has raised sufficiently serious shortcoming with the Officer’s materiality analysis. In my view, it is transparent, justified and intelligible.

[13] Mr. Himel also argued that the documents provided in response to the procedural fairness letter were ignored. I see no evidence of this in the decision. The Officer referenced the

documents but explained that none of these documents disabused them of the concern that Mr. Himel had submitted a fraudulent reference letter with the initial application.

[14] In written submissions, Mr. Himel argued that the process was unfair. He argued that, because the Officer did not consider his response to the procedural fairness letter, he had not been given a meaningful opportunity to respond and should be given an opportunity to respond to the Officer's concerns. The Officer's concerns were set out in the procedural fairness letter and, as I have already noted, the Officer considered Mr. Himel's response in their decision. In these circumstances, I find that Mr. Himel knew the case he had to meet and had a meaningful opportunity to respond.

[15] Neither party raised a question for certification and I agree none arises.

**JUDGMENT in IMM-7196-23**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed; and

2. No serious question of general importance in certified.

"Lobat Sadrehashemi"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7196-23 |
| **STYLE OF CAUSE:** | HIMEL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JULY 18, 2024 |
| **JUDGMENT AND REASONS:** | SADREHASHEMI J. |
| **DATED:** | JANUARY 3, 2025 |

**APPEARANCES:**

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| Robert Gertler | FOR THE APPLICANT |
| Elijah Lo Re | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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