Federal Court Cour fédérale

Date: 20250113

Docket: IMM-9436-23

Citation: 2025 FC 69

Ottawa, Ontario, January 13, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

OMODOLAMU FATIMOH SALU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Omodolamu Salu seeks judicial review of a decision by the Immigration Division [ID] of the Immigration and Refugee Board of Canada, finding her inadmissible to Canada for a period of five years for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. At Ms. Salu's request, and with the consent of the Minister, the Court has determined this application on the written materials filed, without an oral

hearing. Having considered the arguments presented in those written materials, I conclude that the application for judicial review must be dismissed, for the following reasons.

[2] At issue in the ID's decision was an answer Ms. Salu gave in a June 2022 application to extend her study permit. The application form contains a standard question asking whether the applicant had ever "committed, been arrested for or been charged with or convicted of any criminal offence in any country or territory." Ms. Salu answered "No" to this question. In fact, she had been charged in December 2021 with fraud over $5,000 and theft over $5,000 in connection with a series of transactions arising at her place of work. These charges were the subject of post-charge diversion and later resulted in a joint submission that Ms. Salu receive a conditional discharge upon payment of restitution. This approach was taken explicitly in consideration of the potential impact of a conviction on Ms. Salu's immigration status.

[3] Paragraph 40(1)(a) of the *IRPA* provides that a foreign national is inadmissible for misrepresentation 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." As this Court has frequently confirmed, a misrepresentation will be material if it is important enough to affect the process, even if it is not decisive or determinative of an application: *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paras 28, 37; *Afzal v Canada (Citizenship and Immigration)*, 2012 FC 426 at para 26.

[4] The ID found that Ms. Salu had been charged with a criminal offence, and that her "No" answer did not disclose these charges and was thus a misrepresentation. The ID further found

that this misrepresentation was material since it was likely to affect the process of assessing and deciding her study permit extension application. The ID noted that by not disclosing the charges, Ms. Salu foreclosed the possibility that an immigration officer could undertake further investigations into the charges that could speak directly to her admissibility and eligibility for an extension of her study permit.

[5] In her testimony to the ID, Ms. Salu stated that she had been unaware that she had been charged with a criminal offence. She testified that she had gone to the police station at their request, but was unaware that she had been arrested or charged. To her understanding, the issue was being taken care of through the repayment of money. She therefore raised the "innocent mistake exception," a principle that recognizes that some errors made in the immigration process may simply be human error that do not warrant a misrepresentation finding and the associated five-year inadmissibility from Canada: see, *e.g.*, *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043 at para 18, *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at paras 16–21, and *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at paras 32–39.

[6] The ID rejected Ms. Salu's argument that she had made an honest mistake. The ID considered the legal parameters of the innocent mistake exception, citing this Court's decisions in *Appiah*, *Gill*, and *Oloumi*. It considered Ms. Salu's testimony that she honestly believed she had not been charged, as well as the evidence indicating she had some difficulty understanding what was happening with her case. However, the ID also considered her evidence that she had

appeared in court and understood that the matter related to theft. The ID found that it was more likely than not that Ms. Salu was aware that she was the subject of criminal charges.

[7] Regardless of Ms. Salu's subjective understanding, the ID went on to find that it was not objectively reasonable on the facts of the case that she was unaware that she was the subject of criminal charges. The ID noted that the arresting officer, who testified at the hearing, explained to Ms. Salu multiple times that she was facing criminal charges and gave her paperwork outlining the charges. It therefore found it was not objectively reasonable to find that she did not believe she was making a misrepresentation on her study permit extension application. Finally, the ID considered Ms. Salu's evidence that she had attention deficit hyperactivity disorder [ADHD] and was taking medication for that condition, but found that there was insufficient medical evidence to find that her condition rendered her unable to understand that she was charged with a criminal offence.

[8] The parties agree that this Court is to review the ID's inadmissibility finding on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Gill* at para 5. When applying this standard, the Court's role is not to undertake a reassessment of the evidence to determine how it might have decided the case. Rather, its review is limited to ensuring that the ID's decision was reasonable, in the sense that it was internally coherent, justified in light of the legal and factual constraints on it and showed the requisite qualities of transparency, intelligibility, and justification: *Vavilov* at paras 15, 82–86, 99–105, 125–126. To succeed on judicial review, an applicant challenging an

administrative decision bears the onus to demonstrate that there are sufficiently serious shortcomings in the decision to render it unreasonable: *Vavilov* at para 100.

[9] I note at the outset that Ms. Salu has filed on this application an affidavit that sets out evidence regarding her ADHD, the criminal matter, her circumstances, and her subjective beliefs, including evidence that goes beyond what was before the ID. Such new evidence regarding the merits that was not before the administrative decision maker is generally not admissible on judicial review: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13–28; *Shhadi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1580 at para 43. Since this evidence, and the arguments based upon it, do not fall within any of the recognized exceptions, I will not take them into account on this application.

[10] Turning to the merits of this application, Ms. Salu challenges the ID's decision on a number of grounds. As set out further below, I am not satisfied that these arguments demonstrate that the ID's decision was unreasonable. Rather, they each effectively ask the Court to reach a different conclusion than the ID based on the evidence that was before it.

[11] Ms. Salu argues that the ID unreasonably based its decision on an assumption that she had spoken about the criminal charges with her court-appointed lawyer at the time she submitted her study permit extension application. She contends that the lawyer's evidence indicated that he may not have spoken with Ms. Salu until after she submitted the application, and that the ID's decision was therefore based on speculation. I disagree. The ID's conclusion regarding Ms. Salu's awareness of the charges was not primarily based on the discussions with her lawyer.

Rather, the ID relied on Ms. Salu's own evidence regarding her court appearance *before* her lawyer was appointed, at which she understood that the matter related to theft. The ID referred to the timing of the lawyer's appointment in April 2022 to conclude that the earlier appearance (without a lawyer) had occurred before she submitted the application in June 2022.

[12] Ms. Salu next challenges the ID's conclusion that the misrepresentation was material, on two grounds. First, she notes that criminal charges are routinely disclosed by Canadian law enforcement to immigration officials, so they cannot be hidden. As the Minister notes, this argument has been raised and rejected repeatedly in this Court: *Chung v Canada (Citizenship and Immigration)*, 2023 FC 896 at para 29, citing *Vahora v Canada (Citizenship and Immigration)*, 2022 FC 778 at para 44, *Hasham v Canada (Citizenship and Immigration)*, 2021 FC 880 at para 40, *Goburdhun* at paras 43–44, and *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at para 21.

[13] Second, she argues that she likely would have been granted a study permit extension even if she had disclosed the charges, or at least been instructed to apply for a work permit or temporary resident permit pending the outcome of the charges, with the same end result of being able to remain in Canada. Again, however, this Court has repeatedly held that it is sufficient under paragraph 40(1)(a) of the *IRPA* that the misrepresentation "could induce an error in the administration" of the *IRPA*, such that the fact that the outcome may have been the same does not render it immaterial: *Afzal* at para 26; *Goburdhun* at para 28; *Oloumi* at para 25. While Ms. Salu identifies factual differences between these cases and her own, these differences do not affect the underlying principle that a misrepresentation need not be determinative to be material.

Nor do the cases stand for the proposition that a deliberate, misleading, or intentional intent to close off a line of inquiry is necessary. To the contrary, the case law confirms that a misrepresentation need not be intentional to result in inadmissibility: *Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452 at para 28; *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 63. The ID clearly and reasonably explained their conclusion that the misrepresentation was material as it could have affected the processing of her application by the immigration officer reviewing it.

[14] In addressing the innocent mistake exemption, Ms. Salu argues that the ID disregarded evidence relating to her subjective belief that she had not been charged. She points to the evidence from (i) the arresting officer, who testified that Ms. Salu was nervous and scared, and did not appear to fully understand, even though she was aware of the charges and the officer explained them several times; and (ii) the court-appointed lawyer, who said that they could not speak to Ms. Salu's subjective understanding. I see no reviewable error in the ID's reasoning. The ID referred to and considered the arresting officer's evidence, including his evidence that Ms. Salu had difficulty understanding, but reached a contrary conclusion regarding her subjective awareness of the charges on the entirety of the evidence. This conclusion was open to the ID on the record. The fact that the ID did not refer to the lawyer's evidence that he could not speak to Ms. Salu's subjective understanding cannot affect the reasonableness of the decision, as this evidence was not probative of that subjective understanding, but simply a confirmation that the lawyer had no evidence to give on the subject. Ms. Salu's arguments simply ask the Court to undertake its own assessment of the cumulative evidence of her subjective understanding and reach its own conclusions, which is not the Court's role on judicial review.

[15] Ms. Salu also argues that the ID's assessment of the objective reasonableness of her asserted belief was unreasonable. She contends that the ID ignored relevant evidence regarding her mental state and her cognitive difficulties, as well as her lawyer's evidence regarding the extent of his explanations regarding the charges and the legal terminology. Again, Ms. Salu has not satisfied me that the ID's analysis fundamentally misapprehended, ignored, or failed to account for relevant evidence: *Vavilov* at para 126. The ID was clearly cognizant of Ms. Salu's ADHD diagnosis, and expressly took it into account in considering the issue of objective reasonableness. The ID's conclusion, that even if Ms. Salu did not believe she was subject to criminal charges, it would be reasonable for someone in her circumstances to seek clarification or understanding of the situation when dealing with court appearances and the police, was reasonable on the evidence before it.

[16] Finally, Ms. Salu contends that it was unreasonable for the ID to conclude that the medication she was taking for her ADHD would help her in understanding her criminal charges. She argues that without any medical qualifications, it was unreasonable for the ID to reach such a conclusion. While caution must always be exercised in the context of evidence regarding medical conditions, I am not satisfied that the ID made an improper inference regarding the impact of the medication on Ms. Salu's understanding. Ms. Salu herself testified that the medication had assisted her in bringing up her grades at school. There was also limited medical evidence presented by Ms. Salu regarding the diagnosis or its effects on her, beyond the existence of the prescription. In my view, it was not unreasonable in this context for the ID to consider that the medication was assisting in the management of her ADHD and her comprehension and success in a postsecondary learning environment, and that it would similarly

assist her comprehension in the context of her criminal charges. In any event, the ID considered this issue only in respect of one aspect of the innocent mistake exception, and it did not and could not have affected the ID's conclusions regarding Ms. Salu's subjective understanding or the objective reasonableness of that understanding.

[17] Ms. Salu would no doubt have preferred the ID to reach a different conclusion regarding the issues of misrepresentation, materiality, and/or the innocent mistake exception based on the evidence that was before it. However, having reviewed the arguments presented, I find the ID's decision was transparent, intelligible, and justified, and did not fundamentally misapprehend or fail to account for the evidence before it. The decision was reasonable, and this application for judicial review must therefore be dismissed.

[18] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-9436-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	OMODOLAMU FATIMOH SALU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	JANUARY 13, 2025

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