Federal Court Cour fédérale

Date: 20250122

Docket: IMM-4557-23

Citation: 2025 FC 123

Ottawa, Ontario, January 22, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ROCHELLE JUDITH D'LIMA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Rochelle Judith D'Lima [Applicant] seeks judicial review of a March 10, 2023 decision [Decision] by the Immigration Appeal Division [IAD]. The Decision upheld a visa officer's [Officer] denial of a sponsored permanent resident visa for the Applicant's husband, Akiem Nickeimo Christie [Mr. Christie]. The IAD, in agreement with the Officer, determined that Mr.

Christie made a misrepresentation on his application by failing to disclose a criminal charge in Jamaica. The IAD dismissed the Applicant's appeal.

[2] This application for judicial review is allowed. The IAD failed to address the central arguments raised by the Applicant, rendering the Decision unreasonable.

II. Background

[3] The Applicant married Mr. Christie in Jamaica on June 26, 2019 and applied to sponsor Mr. Christie for permanent residence on August 16, 2019. More than one-year later, in December 2020, Mr. Christie was charged in Jamaica for possession of an illegal firearm.

[4] On May 26, 2021, Immigration, Refugee and Citizenship Canada [IRCC] sent Mr. Christie a letter requesting a police certificate by June 25, 2021. Counsel for the Applicant [Counsel] requested an extension, which was granted. Counsel requested an additional 90-day extension due to Mr. Christie's ongoing court case, since a police report could not be provided until the court proceedings were completed.

[5] On October 13, 2021, the IRCC requested a newly complete Schedule A form and police certificate. Counsel submitted the updated Schedule A form and requested an additional 90-day extension due to COVID-19 causing delays in the court proceeding. On December 22, 2021, Counsel provided the police certificate.

[6] On January 6, 2022, the IRCC requested the following documents: “Court record: Provide court records/details of court case” and “Court judgment: Court judgment/resolution relating to the case (if applicable)”. In response, on January 14, 2022, Counsel advised IRCC the case was ongoing, with trial set to commence in May 2022. Counsel requested the IRCC put the application on hold until the court proceeding was finalized.

[7] On January 19, 2022, the Officer issued a letter citing concerns pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] subsections 11(1) and 16(1):

> “[Mr. Christie] failed to provide details, as requested, on the ongoing court case you are facing. As such, I have concerns that you may have not answered truthfully to questions on your Schedule A/Background Information form, section 4.”

[8] On January 26, 2022, Counsel responded that there was no intention to misrepresent information. Since Mr. Christie had not been convicted, nor formally charged with a crime, he made an inadvertent error in misunderstanding the form.

[9] On March 11, 2022, the Officer determined Mr. Christie did not meet the requirements for immigration to Canada because of his failure to disclose the court case. The Officer noted Counsel’s correspondence failed to provide any additional details of the pending court case. The Officer found Mr. Christie withheld material facts concerning the details and nature of his case which induced, or could have induced, errors in the administration of *IRPA*. The Officer was satisfied Mr. Christie was inadmissible. The Applicant appealed the Officer’s decision.

III. Decision

[10] The IAD found the marriage genuine, yet Mr. Christie was negligent in his failure to report the criminal charges, amounting to serious misrepresentation. Accordingly, pursuant to *IRPA* subsection 40(2), he was inadmissible to Canada for five years.

[11] While the misrepresentation finding prevents the couple from cohabitation in Canada for five years, there were insufficient humanitarian and compassionate [H&C] considerations to warrant special relief.

A. *Misrepresentation*

[12] The IAD found Mr. Christie engaged in misrepresentation by withholding information, and was therefore inadmissible to Canada for five years. The IAD noted Mr. Christie concealed the nature of the court case in the November 2021 Schedule A and failed to provide the requested court records.

[13] The Applicant provided no details regarding Mr. Christie's charges for 15 months. The Applicant claims this failure was due to misunderstanding and miscommunication. Based on testimony, the IAD accepted the Applicant was not aware Mr. Christie was charged with a criminal offence until March 2022. However, the IAD found the Applicant negligent in: failing to obtain details of Mr. Christie's criminal charges; failing to provide information to Counsel; and failing to review the second Schedule A form. The IAD found Counsel remiss in failing to question the Applicant about the court case and failing to advise her to report the nature of the charges to IRCC. The IAD acknowledged Counsel's January 26, 2022 statement that the

Applicant advised Counsel that Mr. Christie had not been criminally charged. However, Counsel's email referencing Mr. Christie's "court case" implies Counsel was hopeful an acquittal could render the details irrelevant.

[14] Mr. Christie is responsible for failing to report the charges. He was fully aware of his criminal charges as of December 18, 2020. He signed the November 2021 Schedule A form indicating he had never been charged nor detained, and did not provide the bail documents in his possession. Even if Mr. Christie signed the Schedule A form without reading it, as he claimed, it was negligent to a degree that could induce an error in the administration of *IRPA*.

[15] Counsel argued lack of disclosure would not have induced an error since a pause in the sponsorship process was requested. However, any pause is entirely in the discretion of the visa post. If granted, a pause in the process does not relieve the requirement to be truthful and disclose material information throughout the entire application period up to final decision. Those applying for status in Canada owe a duty of candour to immigration authorities. Mr. Christie, and the Applicant, failed to inform Counsel of the criminal charges for over six months. In turn, Counsel failed to give the details of the legal proceeding to the visa post.

B. *H&C Considerations*

[16] The IAD found the following factors were of weight in this appeal.

[17] First, the IAD found the misrepresentation was serious. Mr. Christie is obligated to promptly inform the visa post of criminal charges. He did not do so. Mr. Christie indicated in the

November 2021 Schedule A he had never been charged with a criminal offence, nor detained. This is entirely misleading and could have induced an error in the administration of *IRPA*.

[18] Second, Mr. Christie's remorsefulness was a neutral factor. He seemed more regretful than remorseful as his testimony seemed focused on explaining and justifying his actions.

[19] Third, the IAD identified hardship, as the parties would have to cohabit outside of Canada. The Applicant stated she would have difficulty finding equivalent employment in Jamaica, and provided articles showing she would need to live in a gated community due to perceived safety risks. On the other hand, the Applicant has not visited Mr. Christie for nearly three years, despite most COVID-related travel restrictions being lifted. The marriage appears intact, and it is within her means to visit him, which would ameliorate some of the pain of separation.

IV. Issues and Standard of Review

[20] After considering the parties' submissions, the sole issue is whether the Decision is reasonable. This gives rise to the following sub-issues:

1. Did the IAD fail to address central arguments?
2. Was the IAD's decision on misrepresentation reasonable?
3. Was the IAD's decision on H&C considerations reasonable?

[21] The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. This case does not

engage any of the exceptions set out by the Supreme Court of Canada in *Vavilov*; therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[22] I find the Decision is unreasonable due to the IAD's failure to engage with the Applicant's central arguments. It is unnecessary to address the remaining sub-issues.

V. Analysis – Failure to Engage with Central Arguments

A. *Applicant's Position*

[23] The IAD failed to engage with two central arguments raised before it, calling into question whether the decision-maker was alert and sensitive to the matter before it (*Vavilov* at para 128).

[24] First, the IAD entirely failed to engage with whether a breach of procedural fairness occurred in the Officer's Decision. Since *IRPA* Paragraph 67(1)(b) provides procedural fairness as a ground on which the IAD may allow an appeal, it is within the mandate of the IAD to consider it. The Officer's concerns, whether the ongoing court case was criminal in nature, was never put to Mr. Christie. Therefore, Mr. Christie was denied the opportunity to fully know the case against him and respond (*Radiyeh v Canada (Citizenship and Immigration)*, 2022 FC 1234 [*Radiyeh*]).

[25] The jurisprudence is clear, specific allegations of misrepresentation must be set out, so an applicant knows the case to be met (*Radiyeh* at paras 25-29; *Mohammed v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 326 at paras 29-30; *Brar v Canada (Citizenship and*

Immigration), 2022 FC 1522 at paras 12-14). The evidence before the IAD showed neither the request letter nor the procedural fairness letter directly puts this concern to Mr. Christie.

[26] Second, the IAD entirely omitted an analysis of whether innocent exception to a finding of misrepresentation ought to apply to the facts of the case. This Court has set aside decisions where the decision-maker failed to address the innocent misrepresentation exception (*Rawat v Canada (Citizenship and Immigration)*, 2023 FC 476; *Wang v Canada (Citizenship and Immigration)*, 2022 FC 808).

[27] Both parties made submissions on innocent misrepresentation. This argument was central to the appeal. The Applicant and Mr. Christie honestly and reasonably believed he was not misrepresenting information. They provided evidence in support of this primary position, as well as their alternative position that Mr. Christie honestly and reasonably believed he was not withholding the criminal nature of his court case. If the IAD did not accept the explanation nor submissions that innocent exception ought to apply in the case, then it was incumbent on the IAD to clearly articulate its reasoning to meet the reasonableness standard of review.

B. *Respondent's Position*

[28] The Respondent, rather than squarely addressing the Applicant's procedural fairness submissions, argues that when the Decision is read as a whole, it is clear the IAD addressed all issues and carefully considered the evidence before it.

[29] The Respondent submits the visa post repeatedly requested routine information, such as police reports. The Applicant and Mr. Christie failed to provide complete, honest and truthful information when they submitted the visa application, as required by *IRPA* sections 16(1) and 40(1)(a). The suggestion that the Officer breached procedural fairness by failing to specifically enquire about the nature of the court case is absurd. It was reasonable for the IAD to find that the Applicant's explanation for the omission was insufficient to overcome the concerns. The Applicant's argument asks this Court to re-weigh the evidence for a more favourable conclusion.

[30] On the *IRPA* section 40(1)(a) innocent misrepresentation exception, the IAD is not required to consider whether the Applicant's misrepresentation was an unintentional oversight. Section 40(1)(a) applies only in truly exceptional circumstances where the applicant honestly and reasonably believed they were not misrepresenting a material fact, the knowledge of which was beyond their control (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at paras 32, 35-36, 39 [*Oloumi*]). This narrow exception does not apply. The Applicant and Mr. Christie were aware they withheld information and chose not to disclose it (*Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at para 21 [*Paashazadeh*]; *Mohammed v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 16384 (FC) at para 41).

[31] Discovery of the misrepresentation prior to final determination of the application does not negate the Applicant's actions (*Oloumi* at para 26). The omission was made. It was material. The explanations given do not overcome the fact that the Applicant withheld information that could have induced an error in the administration of *IRPA*. Furthermore, intentionality is not required to prove misrepresentation. *IRPA* paragraph 40(1)(a) includes fraudulent, negligent, or innocent

misrepresentations (*Paashazadeh* at para 18; *Oloumi* at para 23; *Mahmood v Canada (Citizenship and Immigration)*, 2011 FC 433 at para 22).

C. *Conclusion*

[32] The IAD failed to grapple with central arguments, resulting in an unreasonable Decision.

[33] The principles of justification and transparency require an administrative decision-maker's reasons to meaningfully account for central issues and concerns raised by the parties (*Vavilov* at para 127). While decision-makers cannot be expected to respond to every argument, nor make an explicit finding on each element, failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision-maker was alert and sensitive to the matter before it (*Vavilov* at para 128).

[34] At the IAD hearing, counsel for the Applicant summarized their position as follows:

> … This decision ought to be set aside for two reasons. First, this is not a case where the Appellant was trying to hide information, nor produce relevant documents, but rather this is a case where the Applicant was simply unaware of what details and documents to provide, as he was unaware of the officer's specific concerns. Second, the finding of misrepresentation is incorrectly made as [1.] he did not withhold the nature of his court case, [2.] the Applicant could not have possibly induced an error in the administration of the Act as he specifically requested that the sponsorship application be put on hold until his court case is finalized, and that he would keep IRCC informed with any important updates. And [3.] in the alternative, he falls within the narrow exception carved in the jurisprudence as he honestly and reasonably believed that he was not withholding any information.

[35] In support of the first argument, the Applicant argued procedural fairness issues arose similar to *Radiyeh*. The visa officer had highly specific concerns that Mr. Christie was facing criminal charges but never put that concern directly to him. As a result, Mr. Christie was given no opportunity to respond.

[36] The Respondent submits no breach of procedural fairness occurred. Officers are not required to: allow applicants the opportunity to respond to concerns on information they are aware of and have provided; seek clarification for deficient applications; reach out to make an applicant's case; advise applicants about concerns arising directly from legislation or regulations; nor provide applicants with a running score at every step of the application process.

[37] Much of the testimony from the Applicant and Mr. Christie showed they did not understand what was specifically requested at the time. On the record, they appear to have misunderstood the Officer as requiring an update on the progress of the court case. I take the Respondent's point that there was only one matter before the Courts, and the Officer was not required to be thoroughly precise. The Applicant submits that the Officer was aware of the issue but did not put it clearly to the Applicant.

[38] It was open to the IAD to find no breach of procedural fairness occurred. However, the IAD was still required to address this central argument (*Vavilov* at paras 127-128). Failure to address central arguments cannot reasonably reflect the stakes of the Decision (*Vavilov* at para 133).

[39] As an alternative to her second argument, that the misrepresentation could not have induced an error in the administration of *IRPA*, the Applicant put forward the innocent mistake exception. Similar in nature to the submissions above, the Applicant argued she provided the Officer with the information she honestly and reasonably believed was requested (*Medel v Canada (Minister of Employment and Immigration)*, 1990 CanLII 12991 (FCA); *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299).

[40] As the IAD did not accept the Applicant's second argument, it was then incumbent on the IAD to consider the alternative innocent mistake submission. It was open to the IAD to find the innocent mistake exception did not apply, however, the IAD failed to address this central argument as required (*Vavilov* at paras 127-128). Lack of engagement with submissions on the innocent mistake exception compounds the unreasonableness of the Decision.

VI. Conclusion

[41] This application for judicial review is allowed. The IAD failed to address the Applicant's central submissions on procedural fairness and the innocent mistake exception.

[42] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-4557-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted for re-determination by a different member of the IAD.
2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4557-23
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