Federal Court  Cour fédérale

Date: 20250218

Docket: IMM-12508-23

Citation: 2025 FC 308

Ottawa, Ontario, February 18, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

SIU HONG SEETO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Seeto, the Applicant in this matter, seeks judicial review of the denial of his application for an open work permit as well as the finding that he is inadmissible pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Mr. Seeto is a 33-year-old national of Hong Kong. He applied for an open work permit to accompany his wife, who was planning to study in Canada.

[3] In reviewing the Applicant's application, the Officer had concerns related to the Applicant's potential inadmissibility to Canada for having failed to disclose an immigration enforcement action which occurred in Australia on or about 2015. The Officer sent the Applicant a Procedural Fairness Letter (PFL) and gave him an opportunity to respond.

[4] Mr. Seeto responded to the Fairness Letter, acknowledging that in 2015 his Australian student visa was cancelled because he had not continued with his studies. He explained that Australian enforcement officers had indicated that there was the potential for the incident to be expunged from his record after the expiry of the three-year entry ban. Mr. Seeto stated that he believed his record had been expunged because in 2018 he applied for an Electronic Travel Authorization ("eTA") to visit Australia and answered "No" when asked whether he had ever been refused a visa or permit, denied entry, or ordered to leave Australia or any other country or territory. He was allowed into Australia despite having provided that answer. He also stated that he answered "No" to the aforementioned question when he applied for a Canadian eTA and was subsequently authorized entry to Canada in December 2022.

[5] Based on his previous experiences, Mr. Seeto stated that he did not think he needed to disclose the 2015 Australian visa cancellation when he applied for the Canadian work permit. In his response to the PFL, Mr. Seeto indicated this was an innocent mistake and he had no intention to mislead immigration. The Officer refused the Applicant's work permit and found him to be inadmissible to Canada for misrepresentation.

[6] The Reviewing Officer acknowledged the Applicant's response to the PFL, but found that his explanation was not sufficient. Because he failed to make full disclosure of his immigration history, Mr. Seeto was also found inadmissible to Canada for a period of five years, pursuant to paragraph 40(1)(a) of *IRPA*.

[7] Mr. Seeto seeks judicial review of the refusal.

[8] The issue in this case is whether the Officer's decision is reasonable. This question is assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[9] In summary, under the *Vavilov* framework, a reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints (*Vavilov* at para 85). The onus is on the Applicants to demonstrate that "any shortcomings or flaws … are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). 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).

[10] The Applicant's main argument is that the Officer failed to engage with his explanation, and did not truly grapple with the question of whether his situation falls within the "innocent

misrepresentation" exception. He submits that his situation is similar to the facts of *Park v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 786 [*Park*], where the applicant was denied a visitor visa because he failed to disclose prior criminal charges. In *Park*, Justice Southcott quashed the decision because the Officer did not adequately respond to the applicant's argument that he honestly and reasonably believed that he had not committed any criminal offences.

[11] In addition, the Applicant notes that there were two Officers involved in the process. The first Officer reviewed his file, and provided notes indicating why they found the innocent mistake exception did not apply. The file was then referred to a Minister's Delegate (the Delegate), who reviewed the question of under s. 40 of *IRPA*. The Delegate did not deal with the Applicant's explanation at all, but inadmissibility rather simply repeated the first Officer's statement that the experience of having a visa cancelled and being removed from Australia is not the kind of thing that a person would easily forget. The Applicant argues that the Delegate's reasons are inadequate.

[12] I am not persuaded that the decision is unreasonable.

[13] The starting point in the analysis is the ongoing onus on the Applicant to be honest and forthright in providing information to obtain status in Canada. This has often been described as a "duty of candour," which is "an overriding principle of the Act" (*Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169 at para 17).

[14] A corollary of this is that the innocent misrepresentation exception must be interpreted narrowly, to apply only to exceptional or extraordinary situations (*Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [*Kazzi*] at para 38). At a minimum, the jurisprudence recognizes two requirements for an innocent misrepresentation: (i) that subjectively the person honestly believes they are not making a misrepresentation; and (ii) that objectively it was reasonable on the facts that the person believed they were not making a misrepresentation. (see *Gill v Canada (Citizenship and Immigration*, 2021 FC 1441 at para 18).

[15] The Applicant argued that he believed he did not need to disclose the cancellation of his Australian visa because the records had been expunged, and he had previously travelled to Australia and Canada without disclosing this information. He says that he explained this in his response to the PFL, arguing that his situation falls within the innocent misrepresentation exception. The Applicant submits that the Officer failed to engage with his explanation.

[16] I disagree. The Officer acknowledged the Applicant's explanation, and indicated why they found it inadequate:

> Having reviewed PA's explanation, I am not satisfied that the response is a reasonable explanation. I find the question to have been clearly stated. Having been interviewed at a POE, his visa cancelled, repatriated, and barred for 3 years is not an ordeal that one would easily forget. I find PA's belief that his record had been "rectified" by the Australian government to be not relevant. The statutory question asks: "have you ever been… denied entry or ordered to leave Canada or any other country?" Regardless of the records, the substantial fact is that he had been denied entry/ordered to leave. I also find that the fact PA was subsequently able to enter Aus to not be relevant. The question is simply "have you ever been… denied entry or ordered to leave Canada or any other country." There is no exception for if you were subsequently approved to enter the country. I also find PA's

> previous entry into Canada to be not relevant to whether he had misrepresented on this application. Had PA properly declared the Australian enforcement actions on his Canadian eTA application, PA would likely have received scrutiny regarding the incident, which was not possible as PA withheld this information on his eTA application. I find this information relevant and material as statutory question responses are important in assessing an applicant's eligibility and admissibility.

[17] In this passage, the Officer engages with the Applicant's narrative about his failure to disclose and explains why it was not found to be sufficient. The Officer then states why this resulted in a finding of inadmissibility. Nothing more is required under reasonableness review.

[18] The cases cited by the Applicant are distinguishable on their facts. For example, in *Park* Justice Southcott found that the decision-maker did not adequately respond to Mr. Park's explanation that he honestly and reasonably believed that he had not committed any criminal offences, based on documents he had been provided by the South Korean government. In contrast, I find the Officer in this case did adequately respond to Mr. Seeto's explanation.

[19] The cases cited by the Respondent are more directly on point, and they confirm that the innocent misrepresentation exception is narrow. For example, in *Kazzi* Justice Gascon highlighted the following at para 26:

> The fact that an amnesty was issued does not mean that Mr. Kazzi was relieved from his obligation, clearly enacted in subsection 16(1) of the IRPA, to provide truthful answers in his applications to the Canadian immigration authorities.

[20] A similar finding was made in *Park*, relied on by the Applicant, in regard to Mr. Park's argument that he had failed to disclose his criminal record because he thought it had been erased

by the passage of time. The decision-maker rejected this explanation, and the Court said the following about the applicant's challenge to this finding:

> [22] I find this reasoning sound and reasonable, in disposing of any argument that the fact the Applicant's offences had lapsed had absolved him of responsibility for his misrepresentation. That is, to the extent he was arguing that he honestly and reasonably believed that he was not required to disclose these offences because they had lapsed, the ID reasonably concluded that the innocent misrepresentation exception did not apply.

[21] In *Bundhel v Canada (Citizenship and Immigration)*, 2014 FC 1147 [*Bundhel*], the Applicant failed to disclose that he had faced charges in India in connection with a reckless driving case and for harbouring a fugitive. The Applicant's convictions were later overturned on appeal; however, Justice Barnes found that the Officer reasonably concluded that the applicant had "deliberately concealed the facts of his criminal arrests and prosecutions" and that "[t]he question that he was asked does not allow for ambiguity" (para 7).

[22] In the present case, the Applicant was similarly asked a question on his previous immigration history, which he answered in the negative. As was the case in *Kazzi* and *Bundhel*, the Officer noted that the question the Applicant was asked was clear and provided for no exceptions (i.e. whether he thought his record had been rectified). Whether or not the issue had been rectified with the Australian authorities, the Applicant was required to disclose the enforcement action in order to comply with *IRPA* subsection 16(1).

[23] Based on the analysis set out above, I can find no basis to conclude that the Officer's decision is unreasonable.

[24] As for the Applicant's argument that the Delegate's reasons are inadequate, I cannot accept this point. The reasons must be read as a whole, in light of the record (*Vavilov* at para 96). The Delegate was only examining whether the reviewing Officer's finding of misrepresentation warranted a further finding that the Applicant was inadmissible under s. 40 of *IRPA*. The question of innocent mistake was primarily reviewed and considered by the reviewing Officer, and the Delegate's reasons simply indicate why they felt that the case fell within s. 40 such that an inadmissibility order should be made. In light of that, the decision is reasonable.

[25] Finally, this not a case where H&C considerations can be considered, in particular because the Applicant did not make any H&C submissions to the Officer in the PFL Response. Based on the analysis set out above, the application for judicial review will be dismissed.

[26] There is no question of general importance for certification.

JUDGMENT in IMM-12508-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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