Federal Court  Cour fédérale

Date: 20250225

Docket: IMM-16635-23

Citation: 2025 FC 368

Ottawa, Ontario, February 25, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

MOOROOGEN TYAHCOOTEE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Mooroogen Tyahcootee is a citizen of Mauritius who entered Canada initially on a temporary resident visa [TRV]. He subsequently received a work permit and was employed here. At the expiry of his TRV, Mr. Tyahcootee returned to Mauritius where he applied for a new visa to re-enter Canada which was refused by Immigration, Refugees and

Citizenship Canada [IRCC]. The visa officer also found Mr. Tyahcootee inadmissible to Canada for five years because of misrepresentation in connection with his TRV application [Decision].

[2] Mr. Tyahcootee seeks judicial review of the Decision arguing that it is unreasonable because the officer erred by failing to address the possibility of innocent misrepresentation. The Respondent disagrees, contending that IRCC reasonably addressed the issue.

[3] Having considered the certified tribunal record, the parties' material, including their written submissions, and their oral arguments, I find that Mr. Tyahcootee has not shown the Decision is unreasonable. The reasons, though brief, nonetheless permit the Court to understand the officer's rationale for refusing the TRV application when viewed holistically against the backdrop of the applicable factual and legal constraints, including the institutional context. I thus will dismiss this judicial review application.

II. Analysis

A. *IRCC's reasons reasonably address the issue of innocent misrepresentation*

[4] I determine that Mr. Tyahcootee has not met his onus of establishing that the Decision is unreasonable. His submissions demand a level of detail and precision in the reasons that is not warranted in the circumstances. When considered against the institutional and surrounding contexts, including the applicable jurisprudence, the visa officer's reasons, as explained in the Global Case Management System [GCMS] notes, are intelligible, transparent and justified, in my

view: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 91, 99, 100.

[5] There is no dispute that Mr. Tyahcootee did not disclose two previously refused Canadian visas and one refused admission to the United States of America in his TRV application. He answered “Non” to the question, “Vous a-t-on déjà refusé un visa ou un permis, interdit l’entrée ou demande de quitter le Canada ou tout autre pays ou territoire?”

[6] Mr. Tyahcootee’s response to IRCC’s procedural fairness letter [PFL] about the refusals, and his evidence on this judicial review, point to his employer’s failure to communicate the two refused Canadian visas, about which Mr. Tyahcootee had informed his employer, to the immigration consultant assisting Mr. Tyahcootee. In addition, Mr. Tyahcootee was unaware that “flagpoling” (i.e. the process of seeking to enter the United States from Canada at a land port of entry, only to be denied entry and then issued a work permit by Canadian authorities) procedurally resulted in refused admission to the United States.

[7] The GCMS notes describe the factual findings the visa officer made based on the response to the PFL. These include: the lack of knowledge about the refused US admission resulting from flagpoling; Mr. Tyahcootee’s employer failing to disclose information about the two refused Canadian visas to the immigration consultant; the disclosure of the refused Canadian visas in connection with the previously issued work permit; and Mr. Tyahcootee’s explanation that he did not intentionally omit the information but rather the omission was a result of human error.

[8] The GCMS notes also contain the visa officer's analysis of the factual findings. In particular, the notes state, not unreasonably in my view, that "[w]hether an applicant previously declared a refusal on a previous application is irrelevant." See, for example, this Court's decisions in *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 [*Malik*] at para 25; *Risasi v Canada (Citizenship and Immigration)*, 2023 FC 1626 [*Risasi*] at para 20.

[9] The GCMS notes next state that, "…applicants are required to answer all questions truthfully for all applications." Indeed, the PFL makes this point: "J'ai des motifs raisonnables de croire que vous n'avez pas satisfait à l'exigence imposée par l'article 16(1) de la Loi sur l'immigration et la protection des réfugiés… Tous les demandeurs sont tenus de fournir des réponses véridiques et d'être francs." (See Annex "A" to these reasons for relevant legislative provisions.)

[10] The visa officer then observes (in the GCMS notes) that "[t]he onus remains on an applicant, not a representative or an employer to provide the required, truthful information." See, for example, this Court's decision in *Risasi*, above at para 18.

[11] The officer also notes that the "Applicant has on more than one occasion omitted the same required information on previous applications." There is no evidence that Mr. Tyahcootee disputes this finding.

[12] I add that the analysis, and the resultant Decision, are focused on the refused Canadian visas which are determinative of the outcome (i.e. the refused TRV application and the finding of

inadmissibility for misrepresentation, under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]).

[13] The officer's analysis thus provides context for the Decision which notes that "the applicant uttered a false document" and that "[t]his information is material to the assessment of the application" because "it could have led to an error in the administration of the act" (i.e. the *IRPA*). See, for example, *Malik*, above at para 25.

[14] Mr. Tyahcootee argues that the Decision should have explained why the omission of the two refused Canadian visas could have led to an error in the administration of the *IRPA*. I disagree. In my view, the cases on which Mr. Tyahcootee seeks to rely in support of this argument are distinguishable.

[15] I refer first to this Court's decision in *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 [*Gill*]. This case involved six (disclosed) refused Canadian applications and one (undisclosed) refused US visa application. It therefore is not surprising, in my view, that Justice McHaffie wanted to see more about how the omission of the latter could have induced error in the face of the disclosed Canadian visas that were refused.

[16] Further, and more to the point, *Gill* was about an applicant who answered "yes" (as opposed to "no") to the question concerning refused visas, who then omitted details about the refused US visa (see para 24) but not the Canadian visa refusals. In that same paragraph, Justice McHaffie notes, and I agree, "The existence of clear language on the application form may thus

be relevant to the adequacy of an officer's rejection of an 'innocent error' based on misunderstanding."

[17] I refer second to this Court's decision in *Singh v Canada (Citizenship and Immigration)*, 2021 FC 828 [*Singh*]. *Singh* also was a case about an applicant who answered "yes" to the question about refused visa applications and failed to disclose the refused US visa.

[18] Here, we have not only the failure to disclose the refused US admission, but also the refused Canadian visas. The failure to do the latter, in the context of answering "no" to the question of visa refusals, is more significant, in my view, than the situations in *Gill* and *Singh*, and is what results in the potential inducement of error in the administration of the *IRPA*. There is no need for the officer to state this, according to *Mailk* (paras 28, 31).

[19] More importantly, Mr. Tyahcootee ostensibly signed the TRV application. This is evident from the face of the application in evidence, as confirmed by Mr. Tyahcootee's counsel at the hearing of this matter. That IRCC does not say anything about this is not surprising because Mr. Tyahcootee himself did not address the issue at all, either in the PFL response or in his evidence on this judicial review.

[20] In other words, there is no evidence or explanation about how that specific act of checking "Non" was a result of innocent misrepresentation because Mr. Tyahcootee did not explain what happened at the time the TRV application was prepared and signed. In fact, Mr. Tyahcootee appears to be asking the Court to make an inference or an assumption (i.e. that the

immigration consultant prepared and signed the application on his behalf without knowledge of or information about the refusals), the very thing Mr. Tyahcootee's counsel argued at the hearing we should not be doing, that is, making any inferences.

[21] In my view, however, the visa officer addresses this directly by noting that the onus remains on the applicant, and not a representative or an employer of the applicant, to provide the required, truthful information (i.e. pursuant to subsection 16(1) of the *IRPA*, as noted in the PFL). In signing the TRV application, and bearing in mind that there is no evidence Mr. Tyahcootee himself did not sign it, Mr. Tyahcootee declared that "[j]e déclare avoir donné de réponses exactes et complètes à toutes les questions de la présente demande."

[22] In other words, while Mr. Tyahcootee's evidence speaks to the information he provided to his employer about the refused Canadian visas and his employer's failure to forward the information to the immigration consultant, his evidence does not address what happened in connection with the preparation and signing of the TRV application which application, therefore, in my view, must be taken at its face.

[23] As this Court previously has found, "an applicant's belief that they were not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it": *Risasi*, above at para 18, citing *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28. That said, while there is no evidence here about what Mr. Tyahcootee may or may not have believed, nor about what he ensured, at the time he signed the TRV application, the fact remains the

application was not truthful and, hence, incomplete by reason of the omitted Canadian visa refusals and US admission refusal.

[24] Further, even if the information about the refusals was "verifiable" by the visa officer, this does not relieve Mr. Tyahcootee of his duty of candour (i.e. "je déclare"): *Akinrinlola v Canada (Citizenship and Immigration),* 2023 FC 1112 at para 18. I therefore decline to address the *mens rea* arguments raised by Mr. Tyahcootee in his written and oral submissions.

[25] In the end, I am satisfied that the visa officer's analysis provides sufficient context for the indication in the Decision that Mr. Tyahcootee "was provided with an opportunity to address this concern [i.e. the utterance of a false document] and has failed to provide any information which overcomes said concern." This statement is indicative, in my view, that the visa officer simply found the information provided in response to the PFL wanting.

[26] Noting that decision makers are not held to a standard of perfection, and applying "common sense and ordinary logic," I am not persuaded that the Decision, including the reasons in the GCMS notes, contain any shortcomings that amount to a failure of justification, intelligibility or transparency: *Vavilov,* above at paras 88, 91, 94.

III. Conclusion

[27] For the above reasons, the judicial review application will be dismissed.

[28] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-16635-23

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, SC 2001, c 27.**
***Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27.**

Obligation — answer truthfully **16 (1)** 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 relevant evidence and documents that the officer reasonably requires.	**Obligation du demandeur** **16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
Misrepresentation **40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation **(a)** 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;	**Fausses déclarations** **40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants : **a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-16635-23
STYLE OF CAUSE:	MOOROOGEN TYAHCOOTEE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 17, 2025
JUDGMENT AND REASONS:	FUHRER J.
DATED:	FEBRUARY 25, 2025

APPEARANCES:

Katherine Filewych	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matkowsky Immigration Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT