Federal Court  Cour fédérale

Date: 20250305

Docket: IMM-6937-24

Citation: 2025 FC 392

Ottawa, Ontario, March 5, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

RODOLFO IDELFONSO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Rodolfo Idelfonso seeks judicial review of a decision of a member of the Immigration Division [Member] that found the Applicant inadmissible to Canada pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*], for misrepresentation on a work permit extension application. Specifically, the Member determined that the Applicant's failure to disclose prior criminal charges that had been resolved without conviction through Canadian judicial proceedings constituted a material misrepresentation that

could have induced an error in the administration of the *Act*. Consequently, the Member issued a five-year exclusion order against the Applicant.

[2] For the following reasons, I will grant this application for judicial review.

I. Overview

[3] The Applicant, a Brazilian national, entered Canada with his wife as a visitor in March 2019. Due to economic conditions in Brazil, he sought work opportunities in Canada and, in December 2019, obtained a one-year work permit supported by a Labour Market Impact Assessment [LMIA] to work as a glass machine operator in Burnaby, British Columbia. In 2020, his employer offered him a promotion to the position of glazier, prompting him to consult an immigration consultant in September 2020, regarding a work permit extension. His work permit extension was approved on December 15, 2020, and remained valid until December 15, 2022.

[4] On September 21, 2020, the Applicant was involved in an altercation with a car seller in Richmond, British Columbia, following a dispute over undisclosed mechanical issues. That evening, police delivered an undertaking to appear at his residence but did not make an arrest.

[5] On November 12, 2020, the Applicant was charged with two counts of assault and one count of mischief.

[6] On July 15, 2021, the Applicant pleaded guilty to mischief and received a conditional discharge with nine months' probation, requiring him to pay restitution, attend anger management counseling, and report to a probation officer monthly. Two assault charges were

stayed. The Applicant was discharged from probation without incident in April 2022. Consequently, he was deemed not to have been convicted of the offence: *Criminal Code*, RSC 1985, c C-46, ss 730(3).

[7] In December 2022, Applicant's work permit expired before he could submit a renewal application. On January 10, 2023, he submitted a new work permit application, answering "no" to whether he had "ever been arrested, charged, or convicted of any criminal offense."

[8] The Applicant attended an interview on January 26, 2023, during which he was informed that the immigration authorities were investigating him for potential misrepresentation. Subsequently, a Canada Border Services Agency enforcement officer prepared a report under subsection 44(1) of the *Act* concluding that: "The omission of the criminal charges on his work permit application #W307991895 is a material fact that the officer processing it requires to make a decision with respect to admissibility, and therefore could have induced an error in the Act."

[9] This report was subsequently referred to the ID for an admissibility hearing.

II. Decision Below

[10] On March 22, 2024, the Member delivered an oral decision finding the Applicant inadmissible to Canada under paragraph 40(1)(a) of the *Act* and issued a five-year exclusion order.

[11] On the central issue of misrepresentation, the Member found, on a balance of probabilities, that the Applicant had personally made the misrepresentation as he had directly

completed the responses on his application, specifically Question 3(a) on the January 2023 work permit application, which explicitly inquired about any history of arrests, charges, or convictions.

[12] With respect to materiality, the Member found that the Applicant's non-disclosure was significant because it "closed off an avenue of investigation." The Member highlighted that the Respondent has the right to conduct further inquiries into an applicant's background and that full disclosure of any past commission of an offense, arrest, charge, or conviction is central to work permit extension determinations. Relying on *Afzal v Canada (Citizenship and Immigration)*, 2012 FC 426 [*Afzal*] and *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 [*Goburdhun*], the Member stated that misrepresentation does not need to be determinative to be material. Citing *Cao v Canada (Citizenship and Immigration)*, 2010 FC 450 [*Cao*], the Member noted that the mere possibility of an error in the immigration process due to the misrepresentation is sufficient to meet the materiality threshold. Additionally, following *Minister of Manpower and Immigration v Brooks*, [1974] SCR 850 [*Brooks*], the Member concluded that providing untruthful answers that prevent further inquiry satisfies the legal requirement for material misrepresentation.

[13] The Member also considered the Applicant's claim of an innocent mistake and applied a two-part test. First, regarding the subjective element, the Member examined the Applicant's assertion that he was confused between Question 22, which asked about convictions, and Question 3(a), which had a broader scope including arrests and charges. However, in assessing the objective element, the Member found that this defence "gravely fails" in light of several key factors. These included the Applicant's prior interaction with law enforcement and the undertaking to appear, his court attendance on November 18, 2020, the receipt of charge

documentation, and his completion of probation requirements, which included restitution payments, anger management counseling, and monthly probation officer reporting. The Member reasoned that the significant time lapse between the Applicant's awareness of the charges around 2020 or 2021 and his January 2023 work permit application further undermined his claim of an innocent mistake.

[14] The Member found that the Applicant's knowledge of the charges was not beyond his control, given his direct engagement with the legal process, including his court attendance, legal representation, and completion of probation conditions. The Member emphasized that the duty of candor required applicants to provide accurate and complete disclosure and that maintaining the integrity of the immigration process necessitates truthful information to allow for a fair and informed assessment of applications.

III. Issues

[15] The Applicant presents two interrelated challenges to the reasonableness of the Member's finding of inadmissibility. The primary issue is whether the Member reasonably concluded that the non-disclosure of resolved Canadian criminal charges amounted to material misrepresentation, particularly as the Member failed to identify specific investigative avenues that were foreclosed as a result. The secondary issue concerns the reasonableness of the Member's application of the innocent mistake doctrine, specifically in differentiating between and applying its subjective and objective elements.

IV. Standard of Review

[16] I agree with the parties that the Member's decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

V. Legal Framework

[17] Paragraph 40(1)(a) of the *Act* governs inadmissibility arising from misrepresenting facts or withholding material facts:

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(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;	**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;

[18] Case law confirms that inadmissibility under paragraph 40(1)(a) requires two elements: (1) a misrepresentation was made; and (2) the misrepresentation is material, capable of inducing an error in the administration of the *Act*: *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441, at para 14; *Ragada v Canada (Citizenship and Immigration)*, 2021 FC 639, at para 18; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004, at para 11.

[19] Establishing misrepresentation does not require any evidence of *mens rea*, premeditation, or intent: *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184 at para 51; *Maan v. Canada (Citizenship and Immigration)*, 2020 FC 118 at paras 24-25. Even innocent omissions of material information may constitute misrepresentation leading to inadmissibility: *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15; *Goburdhun* at para 28.

[20] The materiality of a misrepresentation is determined by its potential to mislead immigration authorities and create a risk of error in administering the *Act*. This assessment is strictly objective, focusing on the inherent potential of the withheld or false information to distort decision-making in the immigration processes: *Goburdhun* at paras 36–37; *Afzal* at paras 23–25. Materiality of a misrepresentation is established "if it is important enough to affect the process" and cause an error in the administration of the *Act*, even if it is not decisive or determinative of an application: *Salu v Canada (Citizenship and Immigration)*, 2025 FC 69, at para 3.

[21] This strict statutory regime allows for a narrow exception in cases of innocent mistake. To qualify, applicants must meet a two-part conjunctive test that incorporates both subjective and objective elements. Specifically, they must establish "both an honest and reasonable belief that they were not withholding material information": *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 416 at para 11; *Ram v Canada (Citizenship and Immigration)*, 2022 FC 795 at para 19. This exception only applies in exceptional circumstances: *Singh v Canada (Citizenship and Immigration)*, 2024 FC 1369 at para 19; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401, at para 25; *Paashazadeh v. Canada (Citizenship and Immigration)*, 2015 FC 327 at para 20.

[22] Other general principles and legal context surrounding paragraph 40(1)(a) have been recently and comprehensively surveyed by Justice Little in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 [*Singh*] at para 28. The core principles are distilled as follows:

1) Section 40 receives broad interpretation to safeguard the integrity of the Canadian immigration system through deterring misrepresentation and ensuring complete, truthful disclosure;
2) The overarching duty of candour under subsection 16(1) of the *Act* requires complete, honest disclosure when seeking entry to Canada, and the duty guides interpretation of section 40;
3) Applicants bear the onus of ensuring accuracy and completeness of the information they provide, and they cannot deflect responsibility by simply claiming innocence or blaming third parties;
4) Paragraph 40(1)(a) expressly captures both erroneous statements and material omissions;
5) Paragraph 40(1)(a) applies to misrepresentations whether deliberate, negligent, intentional, or unintentional;
6) Applicants are responsible for paragraph 40(1)(a) misrepresentations made directly by them or indirectly through others, including immigration consultants or agents; and
7) Responsibility stemming from paragraph 40(1)(a) attaches even to misrepresentations made without the applicant's knowledge, including those by third parties.

VI. Analysis

A. *The Member's decision is unreasonable*

[23] The Applicant challenges the reasonableness of the Member's materiality finding. He submits that the Member unreasonably made a summary finding that the Applicant's misrepresentation was material, without providing any analysis or reasoning regarding how it might have induced an error in administration of the *Act*. He submits that this fails to meet the minimal requirement of reasons as enunciated in *Vavilov*.

[24] I agree. A proper materiality analysis under subsection 40(1) of the *Act* requires more than a generic assertion that an omission could have obstructed further inquiry. The Member must identify the specific inquiries that were purportedly obstructed, explain how they could have led to relevant information, and establish how that information could have induced an error in administering the *Act*. Specifically, I find that the Member's reasoning suffers from two fatal flaws: (1) a misstatement of the legal test; and (2) a failure to establish a link between non-disclosure and a potential administrative error under paragraph 40(1)(a).

[25] The Member erred in articulating the materiality test as follows:

> The test is whether the untruthful or misleading answers have been effective for closing or averting further inquiries, even if those inquiries might not have turned up any independent ground for inadmissibility.

This misstates the law. As clarified in *Afzal* and *Goburdhun*, materiality requires that the withheld information could affect the application of statutory criteria relevant to the Applicant's status determination.

[26] Applying this flawed test, the Member concluded:

> Now, I find that this information is material, because it did close off an avenue of investigation. The Minister has a right to make further inquiries and do a fulsome disclosure of any commission, arrest or charge or conviction is likely a central component to determining whether or not an extension should be extended, and not the minimal to conduct further inquiries even if not the basis for inadmissibility. As such, I find it relevant to the inquiry before me.

This analysis is unreasonable. It fails to establish any link between the non-disclosure and a potential administrative error. The Member did not identify which statutory criterion may have been misapplied due to the omission, nor did the Member explain how non-disclosure could have affected the determination of work permit eligibility. Importantly, the Member did not address the fundamental issue of whether resolved charges, in the absence of a conviction, could have any bearing on the Applicant's admissibility.

[27] This analytical gap is particularly glaring given that, at the time of the misrepresentation, the Applicant was deemed not to have been convicted. The charges had been processed within the Canadian judicial system and resolved through conditional discharges. In this circumstance, unlike an unresolved charge, there can be no potential grounds of inadmissibility arising from it.

[28] I reiterate that while paragraph 40(1)(a) does *not* require *actual* error, it demands *potential* error in the administration. Prior cases like *Cao* and *Brooks* found materiality where non-disclosure left an issue genuinely open to determination. Here, by contrast, the Canadian judicial system had fully resolved the matter, leaving no apparent residual uncertainty for immigration officials to investigate vis-à-vis statutory eligibility criteria. Therefore, if any

uncertainty remains, the Member needs to identify it and explain how it creates a risk of error in administering the *Act*.

[29] I therefore find the Member's decision is unreasonable with regards to the materiality of the Non-Disclosure. As this issue is dispositive of the application, I need not address the alleged error regarding innocent mistake.

B. *The proposed question does not meet the test for certification*

[30] The Applicant proposes the following question for certification:

> Where a foreign national fails to disclose a Canadian criminal charge that has been resolved without conviction through judicial proceedings in Canada, must the tribunal specifically identify what legitimate avenues of investigation were foreclosed by the non-disclosure in order to establish materiality under paragraph 40(1)(a) of IRPA, considering that the disposition of the Canadian criminal matter definitively resolves any potential grounds of inadmissibility arising from that charge?

[31] I agree with the Respondent that the proposed question for certification lacks the requisite general importance to justify appellate review. The question's narrow focus on resolved criminal charges and its fact-specific nature make it unsuitable for certification, as it neither raises a novel legal issue nor transcends the immediate facts and interests of this case.

[32] While the issue raised may have significance for the Applicant, it lacks the requisite general importance that would justify appellate consideration. The established jurisprudential framework already provides sufficient guidance on materiality assessments, making certification unnecessary in these circumstances. Accordingly, I decline to certify the proposed question.

JUDGMENT in IMM-6937-24

THIS COURT'S JUDGMENT is that this application is granted and the decision on the Applicant's admissibility set aside and is to be determined by a different Member in accordance with these Reasons.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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