Federal Court  Cour fédérale

Date: 20251010

Docket: IMM-17603-24

Citation: 2025 FC 1683

Ottawa, Ontario, October 10, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

ANSUMANA TUNKARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Ansumana Tunkara, seeks judicial review of a decision of an Immigration Officer [Officer] refusing his application for permanent residence under the Spouse or Common-Law Partner in Canada class. This is the Applicant's second application for permanent residence that has been refused.

[2] The Officer determined that the Applicant had no status in Canada and thus did not meet the requirements under s. 124(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] nor was he eligible under the Spousal Public Policy [Policy].

[3] For the reasons that follow, the application for judicial review is dismissed.

I. Background

[4] The Applicant was originally from Gambia. He first entered Canada in 2010 from the United States by presenting a false U.S. passport with the name “Boba Fofana”. He claimed refugee protection under that assumed name. The claim was accepted by the Refugee Protection Division [RPD] on May 16, 2012, and he was conferred protected person status.

[5] According to the permanent residency application that is the subject of this judicial review, he travelled to Gambia and took part in a traditional marriage to his wife in May or June of 2012.

[6] In February 2013, the Applicant applied for permanent residence as a protected person. When he attended an interview as part of the stage 2 assessment, irregularities regarding his identity were detected, prompting an investigation. On October 20, 2014, his first permanent residency application was refused on the basis that he was inadmissible for misrepresentation under s. 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In addition to his false identity, the refusal letter listed his failure to disclose both his residency in the U.S. from 2001 to 2010, and a 2003 criminal conviction in the U.S..

[7] On January 29, 2021, the Applicant submitted a new application for permanent residence under the Spouse or Common-Law Partner in Canada Class [Second PR Application].

[8] The Second PR Application was made pursuant to the Policy, issued under s. 25(1) of the IRPA. The Policy allows spouses already living with their sponsors in Canada to apply for permanent residence without holding temporary resident status. It also exempts applicants from inadmissibility arising from "lack of status" under s. 21(1) of the IRPA and paragraph 72(1)(e)(i) of the IRPR.

[9] On November 24, 2024, while his Second PR Application was under review, the RPD vacated his refugee protection pursuant to s. 109(1) of IRPA. The RPD concluded that the Applicant omitted and misrepresented material facts from his original claim, including the following:

> (a) Misrepresented his personal identity as Baba Fofana, when in fact his true name is Ansumana Tunkara;
>
> (b) Omitted that he resided in the U.S. from 2001 to 2010;
>
> (c) Omitted that he was criminally convicted in the U.S. during that time;
>
> (d) Mispresented that he lived, and worked as a farmer, in Gambia up until 2006, when in fact he went to the U.S. in 2001;
>
> (e) Misrepresented that he was politically active in Gambia between 2003 and 2006, when in fact he was in the U.S. for most or all of that time;
>
> (f) Omitted that he was married, and the subject of a sponsorship application, in the U.S.; and
>
> (g) Misrepresented that he was in Senegal from 2006 to 2010, when in fact he was in the U.S. for most or all of that time.

[10] The RPD found there was a "causal link between the misrepresentations and omissions and the granting of his refugee status." The Applicant was living in the U.S. at the time of his

alleged persecution in Gambia. It determined that there was insufficient untainted evidence before the original panel to justify granting the refugee claim.

[11] Thereafter, a report under s. 44(1) of IRPA and a deportation order were issued on the basis that he was inadmissible pursuant to s. 40(1)(c) of the IRPA. Section 40(1)(c) of IRPA provides:

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
…	…
(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection;	**(c)** l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;

[12] On July 29, 2024, the Officer responsible for his Second PR Application issued a procedural fairness letter. It stated, in part:

> Based on the information available, it would appear you fraudulently misrepresented yourself upon entering Canada, and with false identification. You were previously under refugee protection and have recently had that status vacated. A vacation of status essentially means you obtained your status in Canada by directly or indirectly misrepresenting or withholding material facts related to the matter. You are now currently under removal order for a reason other than lack of status. therefore you currently do not meet the requirements under [the Spousal] Public Policy. You also have previous criminality in the United States where you were found guilty of "Offering a false instrument to File-2nd Degree". If convicted in Canada, this would make you inadmissible under

> 36(2)(b) of the criminal code. I also have concerns regarding your true identity based on the lack of documentation.

[13] The Applicant, through his former counsel, responded to the PFL. Amongst other things, he argued that the use of a false passport upon entry, in the context of making a refugee claim, should not render him inadmissible.

[14] The response also provided further background on the Applicant's U.S. conviction, expressed remorse, and included a "rehabilitation application". With respect to the rehabilitation application, the Applicant's response to the PFL explained:

> Given that the herein conviction was committed and fine paid over 10 years ago, and the applicant has not committed any other offences , he per the Immigration Act would be deemed rehabilitated and is able to apply for rehabilitation as 5 years have passed since paying the fine in July 31, 2003.
>
> We therefore attach a rehabilitation application and filing fee to continue processing the herein inland application under Humanitarian and Compassionate grounds.

II. Decision under review

[15] The reasons under review include a September 6, 2024, letter to the Applicant refusing his Second PR Application [Refusal Letter] and the associated Global Case Management System [GCMS] notes: *Agbai v Canada (Citizenship and Immigration)*, 2025 FC 101 at para 37.

[16] The GCMS notes first address the Applicant's ineligibility under s. 124(b) of the IRPR.

Section 124 of the IRPR provides:

124 A foreign national is a member of the spouse or common-law partner in Canada class if they	**124** Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :
(a) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;	**a)** il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;
(b) have temporary resident status in Canada; and	**b)** il détient le statut de résident temporaire au Canada;
(c) are the subject of a sponsorship application.	**c)** une demande de parrainage a été déposée à son égard.

[17] The GCMS notes first address the Applicant's ineligibility under s. 124(b) of the IRPR.

Section 124 of the IRPR provides:

> Although the public policy exempts applicants from the requirement to have temporary resident status in Canada and the requirement not to be inadmissible for lack of status, "lack of status" refers to a very limited number of situations. "Lack of status" does not refer to any other inadmissibility including:
>
> - failure to obtain permission to enter Canada after being deported;
> - persons who have entered Canada with a fraudulent or improperly obtained passport, travel document or visa and who have used the document for misrepresentation under IRPA.
> - persons under removal orders or facing enforcement proceedings for reasons other than lack of status reasons.

[18] The GCMS notes recount the Applicant's immigration history including his failure to disclose his criminal conviction in the U.S. The Officer notes the U.S. conviction is equivalent to subsection 368(1) of the *Criminal Code*, RSC 1985, c C-46, punishable by up to ten years imprisonment.

[19] With respect to the conviction, the Officer states, "[t]o point out, although the clients previous criminal conviction does exist, this will not be determined in my current final decision as it would have been considered in stage 2 assessment."

[20] The reasons further recount that Applicant's refugee status was vacated in 2023 on the basis of misrepresentation. The Refusal Letter also considers the deportation order:

> Due to the circumstances, you received a deportation order against you, which is in force as of 2024/01/12, for 40(1)(c) - on a balance of probabilities there was grounds to believe the individual is inadmissible for misrepresentation on the final determination to vacate his status of refugee protection. Therefore you currently do not hold any valid status in Canada, and do not meet public policy. I am not satisfied there is enough to warrant an exemption under the regulations of this program.

[21] The GCMS notes address the Applicant's response to the PFL where the Applicant argued that use of a false passport upon entry, in the context of making a refugee claim, should not render him inadmissible. The Officer explains:

> Although consideration may be viewed for coming to Canada with a false passport, and the circumstances of having to flee ones country. However, the applicant used this false information/documentation to gain status in Canada by falsifying his identity and storyline on his refugee claim. It was determined by the refugee board he misrepresented himself and his status was vacated. Based on these facts, the applicant does not meet the

> requirements under public policy to become a permanent resident in Canada, due to misrepresenting facts under IRPA.

[22] Finally, the GCMS notes address his establishment in Canada:

> Although the client has been in Canada since 2010 and now has a spouse, his circumstances may have been different if he was honest with his intentions when applying for status in Canada. I don't think he has contributed or is an integral part to society as he has not been honest from the start. Therefore, I give little weigh to his establishment into Canada. I also am of the belief his wife can go visit him back home if need be and maintain their relationship together.

III. Preliminary Issue

[23] The Applicant's Memorandum of Argument argues that the Officer erred in failing to apply s. 18(2)(c) of the IRPR. Section 18 of the IRPR sets out the class of persons deemed to have been rehabilitated under s. 36(3)(c) of the IRPA (serious criminality).

[24] The oral submissions on behalf of the Applicant bore no resemblance to the grounds in his Memorandum of Argument or Notice of Application.

[25] At the hearing, counsel for the Applicant attempted to argue that the refusal of the Second PR Application violated s. 11(h) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. He also challenged the reasonableness of the decision based on the Officer's failure to consider, or to adequately consider, whether the Applicant should be granted permanent residency on the basis of humanitarian and compassionate grounds.

[26] The Applicant's Memorandum was entirely silent on both the *Charter* and humanitarian and compassionate considerations. As noted, the Applicant's written submissions were dedicated entirely to the issue of criminal rehabilitation.

[27] Counsel for the Respondent objected to the Applicant's new arguments.

[28] The case law is clear: a party cannot rely on an argument that was not in their written submissions: *Tehranimotamed v Canada (Citizenship and Immigration)*, 2024 FC 548 at para 12; *Kilback v Canada*, 2023 FCA 96 at para 41; *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16005 at paras 10 – 11. This is especially so in matters where leave is granted, such as immigration and refugee matters before this Court: *Bedeir v Canada (Citizenship and Immigration)*, 2016 FC 594 at para 16; *Lakatos v Canada (Citizenship and Immigration)*, 2019 FC 864 at paras 25 – 29.

[29] The Court may exercise its discretion to entertain arguments not in the written submissions if it determines it is in the interests of justice to do so. The Applicant has not persuaded me that it is in the interests of justice to entertain these new grounds.

[30] There was no explanation for why the Applicant did not include these grounds in his Memorandum.

[31] Counsel for the Applicant did not provide any advance notice to the Respondent or the Court of his intention to raise grounds not canvassed in his written submission. It is unfair and

inappropriate to raise new grounds for the first time at the hearing without prior notice: *Kiver v Canada (Citizenship and Immigration)*, 2025 FC 819 at para 7.

[32] Based on the foregoing, I decline to exercise my discretion to adjudicate the new grounds raised by the Applicant at the hearing.

IV. Issue and standard of review

[33] The sole issue is whether the refusal of the Second PR Application was unreasonable for failing to address the rehabilitation application made by the Applicant under s. 18(3)(a) of the IRPR.

[34] The standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86.

V. Analysis

[35] The Applicant argues that the Officer erred in failing to consider s. 18(2)(c), which would have deemed the Applicant rehabilitated as more than ten years had elapsed between his U.S. conviction and the Officer's decision. In support, he points to his clean record in Canada, steady employment since 2016, and efforts to avoid the circumstances that led to his past misconduct. He contends that, by overlooking evidence of his rehabilitation, community contributions, and the accompanying documentation, the Officer reached an unreasonable conclusion.

[36] As noted, section 18 of the IRPR sets out the class of persons deemed to have been rehabilitated under s. 36(3)(c) of the IRPA. Section 36 of IRPA concerns inadmissibility on the basis of serious criminality.

[37] The Respondent says that the Applicant's reliance s. 18(2)(c) of the IRPR is misplaced and that the refusal of the Second PR Application was not based on the Applicant's U.S. conviction and therefore the deeming provisions on rehabilitation were never engaged.

[38] I agree.

[39] A review of the GCMS notes confirm that the refusal was not predicated on the Applicant's prior conviction. The Officer was explicit: "[t]o point out, although the client's previous criminal conviction does exist, this will not be determined in my current final decision as it would have been considered in stage 2 assessment."

[40] Indeed, based on the record before me, it does not appear that there has been any formal determination that the Applicant is inadmissible on the basis of criminality. The removal order grounded his admissibility in the RPD's decision to vacate the Applicant's refugee claim (s.40(1)(c)).

[41] Considerations with respect to the Applicant's clean record and explanations about his misrepresentation do not displace the determinative findings of ineligibility under the Policy,

which rest on: (a) use of a fraudulent travel document in combination with a misrepresentation under the IRPA, and (b) the existence of a removal order.

[42] The Policy is clear. Part 3 explains:

> The effect of the policy is to exempt applicants from the requirement under R124(b) to be in status and the requirements under A21(1) and R72(1)(e)(i) to not be inadmissible due to a lack of status; however, all other requirements of the class apply…."
>
> (emphasis added).

[43] It goes on:

> "Lack of status" does not refer to any other inadmissibilities including:
>
> …
>
> - persons who have entered Canada with a fraudulent or improperly obtained passport, travel document or visa and who have used the document for misrepresentation under IRPA.
>
> **Note:** For greater certainty, persons will be excluded from being granted permanent residence under this public policy if they used a fraudulent or improperly obtained passport, travel document or visa to gain entry to Canada and this document was not surrendered or seized upon arrival and the applicant used these fraudulent or improperly obtained documents to acquire temporary or permanent resident status. Other cases may be refused for misrepresentation if there is clear evidence of misrepresentation under IRPA in accordance with the Department's guidelines."
>
> - persons under removal orders or facing enforcement proceedings for reasons other than the above-noted lack of status reasons.

[44] The Applicant's use of a fraudulent U.S. passport to enter Canada in 2010, and his subsequent reliance on that document to obtain protected person status, falls squarely within this

exclusion. The Respondents state, and I agree, that the Officer “could not have just ignored or waived the eligib[ility] requirements in the circumstances.”

VI. Conclusion

[45] For the reasons set out above, I find no reviewable error in the Officer’s decision. The application is dismissed.

[46] The parties did not raise a question for certification and none arises.

THIS COURT’S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"Meaghan M. Conroy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mubashir Rizvi	FOR THE APPLICANT
Charles J. Jubenville	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MHR Law Firm Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT