Federal Court  Cour fédérale

Date: 20140226

Docket: IMM-11988-12

Citation: 2014 FC 176

Toronto, Ontario, February 26, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

PRABHJOT KAUR SIDHU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant seeks a judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision rendered by an Immigration Officer, dated October 16, 2012, refusing to process the Applicant's application for permanent residence under the federal skilled worker class [PR application] on the basis that the Applicant was inadmissible to Canada for misrepresentation under paragraph 40(1)(*a*) of the *IRPA*.

II. Background

[2] The Applicant, Mrs. Prabhjot Kaur Sidhu, is a citizen of India, born in 1984. She is married and has an infant son.

[3] The Applicant received a Master's degree in Science (Computer Technology) from Punjab University in 2008.

[4] In the same year, the Applicant states that she began working as a computer instructor for a tech company named Data Soft Tech Software Solutions [Data Soft Tech]. At this time, the Applicant submitted a first PR application. This application was rejected in 2010, on the basis that she did not meet the minimum point requirement to qualify for immigration to Canada.

[5] In May 2010, the Applicant submitted a second PR application to the High Commission of Canada in New Delhi.

[6] On June 19, 2012, the Officer sent the Applicant a procedural fairness letter outlining a number of concerns he had in regard to her employment, including:

a) The Applicant and her colleague provided contradictory information about her designation, job duties, project work together, and her presence in the office on the day the Officer called her workplace;

b) The Applicant was constantly referring to papers and her application form when answering questions during the Officer's telephone verification;

c) The letterhead and address of Data Soft Tech on the employment letter which the Applicant submitted in support of her second PR application was different than that which was indicated on the employment letter submitted in her first PR application, although both employment letters were dated May 1, 2008.

[7] In response to the procedural fairness letter, the Applicant submitted several documents including a statutory declaration from her colleague, Nitin Sharma, and the Director/Owner of Data Soft Tech, Amritpal Singh, an updated employment letter and copies of the company's attendance register.

[8] On October 16, 2012, the Officer rejected the Applicant's PR application on the basis that she was inadmissible to Canada for misrepresentation under paragraph 40(1)(*a*) of the *IRPA* which is the underlying application before this Court.

III. Decision under Review

[9] The Officer's Global Case Management System [GCMS] notes provide the reasons for the decision:

> Misrepresentation assessment: I have reviewed the documentation and information relating to Ms. Prabhjot Kaur Sidhu's employment which have been submitted as part of her application for permanent residence in Canada. Due to concerns about the genuineness of the applicant's stated employment experience, a telephone verification was undertaken on 19 May 2012 which raised significant concerns

> about the applicant's stated employment. A procedural fairness letter dated 19 June 2012 was sent to the applicant. A written response signed by the applicant and with accompanying documents was received at the CHC on 11 July 2012. All information on file relating to Ms. Sidhu's employment was reviewed in rendering this decision. In my opinion, on a balance of probabilities, the applicant misrepresented her employment history by providing false information about her employment as a computer instructor with Data Soft Tech. Following a review of the information, I find it reasonable to conclude that Ms. Sidhu does not have the experience claimed in her application. This information provided in support of this application is material and could have led to an error in the administration of the Act as it could have led an officer to be satisfied that the applicant met the requirements of the Act with respect to [her] employment history and work experience and the corresponding points that could have been awarded. I am, therefore, of the opinion that the applicant is inadmissible to Canada under section 40 of the Act. This application is refused.
>
> (Application Record at p 9).

IV. Issues

[10] (1) Did the Officer ignore evidence that explained inconsistencies in the Applicant's application?

(2) Were the Officer's reasons inadequate?

V. Relevant Legislative Provisions

[11] The following legislative provision of the *IRPA* is relevant:

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	*a*) directement ou indirectement, faire uneprésentation erronée sur

relating to a relevant matter that induces or could induce an error in the administration of this Act;	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;
…	[…]

VI. Position of the Parties

[12] The Applicant submits that the Officer's decision is unreasonable because he failed to consider her explanations for the inconsistencies in her application and did not provide any analysis of that evidence, or indicate how it did or did not assuage his concerns.

[13] The Applicant also submits that the Officer provided inadequate reasons for his decision. In particular, the Applicant states that the Officer failed to indicate the material facts she had misrepresented in her application.

[14] The Respondent asserts that the Applicant's argument that the Officer ignored evidence is unsupported. The Officer considered all of the documentation submitted; however, this documentation did not satisfy the Officer that the Applicant had the stated work experience. There were too many discrepancies that remained unexplained.

[15] The Respondent also submits that the Officer's reasons are adequate. The Officer considered all of the Applicant's evidence, identified concerns with the evidence and provided her an opportunity to address those concerns. The Respondent maintains that the Officer's refusal letter

and GCMS notes demonstrate why the application was refused. The decision therefore falls within the range of possible and acceptable outcomes.

VII. Standard of Review

[16] The standard of review to be applied when determining whether an immigration officer made a reviewable error in concluding that an applicant made a material misrepresentation pursuant to paragraph 40(1)(*a*) of the *IRPA* is that of reasonableness (*Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971; *Oloumi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 428 at para 12).

[17] The adequacy of reasons in such matters is also considered in the context of the reasonableness (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 22; *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1083 at para 19-24).

[18] In *Newfoundland and Labrador Nurses' Union*, the Supreme Court of Canada held that the adequacy of reasons is not a stand-alone basis for quashing a decision. Rather, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14).

VIII. Analysis

[19] Having carefully reviewed the decision, the Court concludes that the reasons provided by the Officer are not adequate with respect to the findings made under paragraph 40(1)(*a*) of the *IRPA*. (For this reason, the Court does not find it necessary to reach a decision on the first issue.)

[20] The test of adequacy of reasons has been articulated by this Court numerous times, including recently in *Canada (Minister of Citizenship and Immigration) v Jeizan*, 2010 FC 323, 386 FTR 1:

> [17] Reasons for decisions are adequate when they are clear, precise and intelligible and when they state why the decision was reached. Adequate reasons show a grasp of the issues raised by the evidence, allow the individual to understand why the decision was made and allow the reviewing court to assess the validity of the decision: see *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] S.C.J. No. 23 at para. 46; *Mehterian v. Canada (Minister of Employment and Immigration)*, [1992] F.C.J. No. 545 (F.C.A.); *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (F.C.A.), [2001] 2 F.C. 25 (C.A.), at para. 22; *Arastu*, above, at paras. 35-36. [Emphasis added.]

[21] While there is no question that an officer's reasons can be brief, they must serve the functions for which the duty to provide them is imposed – they must inform the Applicant of the underlying rationale for the decision (*VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FC 25 at para 21-22 (CA)).

[22] Even when read in conjunction with the GCMS notes, the Officer's decision in this case does not provide sufficient explanation to allow the Applicant, or the Court, to understand how and why he determined she had misrepresented material facts. Neither the Officer's refusal letter nor the

GCMS notes reflect any analysis on the perceived misrepresentation(s). In fact, the Officer does not indicate whatsoever the nature or the extent of any misrepresentation(s) in his decision.

[23] A finding of inadmissibility for misrepresentation under paragraph 40(1)(*a*) requires two factors to be present: there must be a misrepresentation by the applicant and that misrepresentation must be material in that it could have induced an error in the administration of the *IRPA* (*Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452).

[24] In reviewing the procedural fairness letter provided to the Applicant on June 19, 2012, it appears that the Officer had some concern regarding the legitimacy of the Applicant's employment letter, inconsistencies in the information provided regarding her workplace, and her need to repeatedly refer to her documentation when answering questions; however, it is not clear whether the Officer considered any of these concerns to be a material misrepresentation, and if so, in what way. The Court cannot speculate on what grounds the Officer determined that the Applicant had materially misrepresented her employment.

[25] In his reasons for decision, the Officer simply states that "the Applicant misrepresented her employment history by providing false information about her employment as a computer instructor with Data Soft Tech" [emphasis added] (Application Record at p 9). This conclusion, without any further reasoning, makes it impossible for the Court to conduct a meaningful assessment of the Officer's findings on misrepresentation (*VIA Rail*, above). Consequently, the Court finds that this decision is flawed and cannot stand.

[26] As stated in *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158, [2011] 4 FCR 425, if a supervising court is prevented from assessing whether a decision is reasonable because too little information has been provided, the reasons are inadequate (at para 16).

[27] It may be that a different officer, after reviewing all of the relevant evidence, will reach the same conclusion as this Officer; there are a number of discrepancies and ambiguities in the Applicant's application; however, it is in the interest of justice that this matter be returned for determination anew (*de novo*) in a manner that meets the basic requirements of procedural fairness.

IX. Conclusion

[28] For all of the above reasons, the Applicant's application for judicial review is granted.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be granted and the matter be returned for determination anew (*de novo*) before a different Immigration Officer with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11988-12
STYLE OF CAUSE:	PRABHJOT KAUR SIDHU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 24, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	FEBRUARY 26, 2014

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