Federal Court Cour fédérale

Date: 20241217

Docket: IMM-7790-23

Citation: 2024 FC 2052

Toronto, Ontario, December 17, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

PEYMAN AMINI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

((Delivered orally from the bench on December 17, 2024, and subject to stylistic, editorial, and syntax edits, as well as reference to jurisprudence and legal citations)

[1] The Applicant seeks judicial review of a decision of a visa officer (the "Officer") refusing his application for a work permit pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001 ("*IRPA*"). The Officer refused his work permit due to a fraudulent Labour Market Impact Assessment ("LMIA").

[2] The Applicant is a citizen of Iran. In 2020, he hired an immigration consultant to help him obtain a work permit. The consultant submitted an application on the Applicant's behalf in 2022, but did not give the Applicant a chance to review the documents, sign any forms, or gain access to the Government of Canada Key ("GCKey") account set up in his name. Shortly afterward, the immigration consultant was exposed as a fraud.

[3] In February 2023, the Officer sent a letter to the Applicant stating their concerns that his LMIA was fraudulent. The Applicant was unaware of this letter, as he could not log in to his GCKey account. In any event, he contacted IRCC the following month to flag that his LMIA was likely fraudulent and that he could not access his GCKey account. In May 2023, the Officer refused the Applicant's work permit application for misrepresentation, based on the fraudulent LMIA.

[4] The issues raised in this application are whether the Officer's decision is reasonable and was made in a procedurally fair manner.

[5] I first note that I find the Applicant's new evidence to be admissible. The Applicant seeks to bring new evidence about the fraud committed by his immigration consultant. These materials meet the requirements for the exception set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, as the evidence postdates the decision, relates to an issue of natural justice, and does not interfere with the role of the administrative decision-maker as merits-decider (at para 20; see also *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 25).

[6] Turning to the merits of the refusal decision, I agree with the Applicant that the Officer's decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 ("*Vavilov*")).

[7] The Officer disregarded the Applicant's submissions. At the time of the refusal decision, the Officer had before them the Applicant's web inquiry. In the inquiry, the Applicant stated that he had no access to his GCKey account and that he had been a victim of mass fraud. These submissions are entirely absent from the decision letter and GCMS notes.

[8] While it is true that a visa officer's decision is not required to address each point raised by the applicant, the Officer was nonetheless required to demonstrate some responsiveness to the Applicant's submissions (*Vavilov* at paras 127-128; *Perez Pena v Canada (Citizenship and Immigration)*, 2021 FC 491 at para 14; *Lin v Canada (Citizenship and Immigration)*, 2023 FC 209 at para 21). The information provided in the Applicant's web inquiry was highly significant to the issue of inadmissibility. The Officer's complete failure to engage with the issues raised by the Applicant demonstrates a fundamental misapprehension of the Applicant's submissions (*Vavilov* at para 126-128). This is a reviewable error under reasonableness review (*Vavilov* at paras 126-128).

[9] Furthermore, the Officer's misapprehension of the Applicant's submissions resulted in a failure to properly consider whether the innocent mistake exception applies in this case (*Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 at paras 30, 33). The Applicant rightly notes that the Officer gave no consideration to his efforts to exercise due diligence prior to the

refusal decision (*Mohammadizadeh v Canada (Citizenship and Immigration)*, 2024 FC 1276 at paras 17, 19).

[10] In my view, the Officer's error also resulted in a breach of the duty of procedural fairness. The Applicant clearly stated to the Officer that he was not able to view the procedural fairness letter, as he could not access his GCKey account. Not only did the Officer fail to recognize this submission, the Officer also characterized the Applicant's webform inquiry as a response to the procedural fairness letter. Respectfully, the Officer's decision is unintelligible in light of the record (*Vavilov* at para 126). It is not possible for the Applicant's webform inquiry to be a response to the procedural fairness letter, when the Applicant states in the inquiry that he was not in a position to view the letter. By misapprehending the Applicant's submissions on this issue, the Officer deprived the Applicant of "a fair opportunity to respond" (*Kaur v Canada (Citizenship and Immigration)*, 2013 FC 1023 at para 20).

[11] For these reasons, I grant this application for judicial review. No question is certified.

JUDGMENT in IMM-7790-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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