

Federal Court



Cour fédérale

Date: 20241224

Docket: IMM-11565-22

Citation: 2024 FC 2096

Ottawa, Ontario, December 24, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SHAMSHAD HUSAIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Shamshad Husain, applied for a temporary resident visa (“TRV”). In his TRV application, he indicated that he had no visa refusals despite being refused a US visitor visa three times. An officer at Immigration, Refugees and Citizenship Canada (“IRCC”) refused the TRV application, finding Mr. Husain inadmissible for misrepresentation. Mr. Husain is challenging this decision on judicial review.

[2] Mr. Husain argues the decision is both procedurally unfair and unreasonable. I do not agree. I find the procedural fairness letter sent by the IRCC was sufficient for Mr. Husain to know the case he had to meet, particularly in the context of a concern that has been raised repeatedly to him over a two-year period. I also do not agree that the Officer failed to consider Mr. Husain's submissions in response to the procedural fairness letter about the application of the "innocent mistake exception". Lastly, I do not agree that the Officer failed to explain why the misrepresentation was material to the processing of the application. Accordingly, I dismiss the judicial review.

II. Procedural History

[3] Mr. Husain has made a number of applications in Canada since 2015, including a work permit that was successfully renewed until 2022. The application at issue before me is an application for a TRV that was filed in March 2020. It was first refused in October 2020. Following an opportunity to respond to a procedural fairness letter, the Officer found that Mr. Husain had misrepresented refusals of US visitor visas in his TRV application. This decision was challenged in this Court and later discontinued when the parties agreed to send it back to be redetermined. When the case went back to be redetermined, a second procedural fairness letter was issued and the application was refused in July 2021 on the same misrepresentation grounds. Mr. Husain challenged this decision in this Court and, again, it was discontinued after the parties again agreed to send it back to be redetermined.

[4] On June 29, 2022, as part of the redetermination process, a third procedural fairness letter was issued. The misrepresentation concern was described in this way:

Specifically, I am concerned that your response of ‘No’ to the question, ‘Have you ever been refused a visa or permit, denied entry to, or ordered to leave Canada or any other country or territory?’ omits material information regarding the outcome of your previous application(s) made to the USA.

[5] Mr. Husain responded to the procedural fairness letter. He noted that he had previously disclosed the two US visa refusals in work permit applications he submitted in late 2015 and 2016. He also explained that he had relied on an unnamed third party to assist with the forms and the omission was inadvertent and not material.

[6] On September 28, 2022, the Officer refused Mr. Husain’s TRV, finding that he had failed to disclose three previous US visa refusals, that the omission was material, and that the “innocent mistake exception” did not apply to his circumstances.

III. Issues and Standard of Review

[7] Mr. Husain raises three issues on judicial review. The first two, the Officer’s responsiveness to Mr. Husain’s “innocent mistake exception” claim and whether the Officer explained their reasons for finding the misrepresentation material, are related to the merits of the decision and therefore the presumption of reasonableness review applies. The third issue relates to the procedure followed. Mr. Husain argues that the procedural fairness letter did not provide sufficient detail of the Officer’s concern so that he would know the case to meet. With respect to the procedural fairness issue, the presumption of reasonableness review does not apply (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 23, 77). The question I need to ask is whether the procedure was fair in all the circumstances (*Canada*

(*Citizenship and Immigration*) v *Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Analysis

[8] An inadmissibility finding due to misrepresentation has serious consequences for an applicant. It leads to a five-year period of inadmissibility during which they cannot apply for permanent residence and they must obtain Ministerial permission to enter Canada (*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], ss 40(2), 40(3)). This Court has found that, given these severe consequences, findings of misrepresentation must be made on the basis of clear and convincing evidence (*Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16; *Chughtai v Canada (Citizenship and Immigration)*, 2016 FC 416 at para 29), that there is a heightened duty of procedural fairness owed (*Tsang v Canada (Citizenship and Immigration)*, 2024 FC 1941 [*Tsang*] at para 30; *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27), and that the reasons provided must reflect the profound consequences (*Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at para 7; *Vavilov* at para 133).

[9] In order to find a person inadmissible for misrepresentation under paragraph 40(1)(a) of IRPA, an officer must determine first, that there has been a misrepresentation and second, that the misrepresentation was material in that it could induce an error in the administration of IRPA.

[10] This Court has consistently held that the misrepresentation provision is to be broadly interpreted given its purpose in promoting the integrity of Canada's immigration scheme (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23; *Tuiran v Canada*

(*Citizenship and Immigration*), 2018 FC 324 at paras 20, 25). An intention to deceive is not necessary to ground a misrepresentation determination (*Khedri v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1397 at para 21; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 [*Baro*] at para 15). However, this Court has recognized, that there is a narrow exception where an applicant can demonstrate that they honestly and reasonably believed that they were not misstating or withholding material information (“innocent mistake exception”) (*Baro* at para 15).

[11] Mr. Husain raised the “innocent mistake exception” in his response to the procedural fairness letter, claiming that the errors in the forms were the result of a third party. On judicial review, Mr. Husain argues that the Officer did not respond to his submissions on the “innocent mistake exception”. I am not persuaded.

[12] In my view, the Officer accurately summarized Mr. Husain’s response to the procedural fairness letter and explained why they did not accept his explanation. The Officer found that Mr. Husain ought to have known that the third visa was refused and that it was his obligation to review the forms for accuracy. I note this is consistent with jurisprudence of this Court and the basic principle that intention to deceive is not required for a misrepresentation finding (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 at para 28). The Officer also noted that the “client history demonstrates he knew of the requirement to disclose prior refusals” and that, despite this, did not disclose any of the refusals on six occasions, and never has disclosed the third refusal on any of the applications. The Officer’s reasons demonstrate that they comprehensively addressed Mr. Husain’s explanations for the misrepresentation.

[13] On materiality, I do not accept the Respondent's submission that it was unnecessary for the Officer to explain how the misrepresentation was material. Materiality is a core component of a misrepresentation finding under paragraph 40(1)(a) of IRPA, where a determination must be made as to whether the misrepresentation was material in that it could induce an error in the administration of IRPA. This Court has held that decision-makers must provide a "comprehensible explanation of how the omission in question might affect the process or the administration of the IRPA" (*Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at paras 27, 29).

[14] In this case, I find the Officer sufficiently explained, in the context of the factual circumstances of Mr. Husain's case, how the omission was material in that it could have induced an error. The Officer explained that the "existence and specific grounds of refusals by FCC partners are material to the proper assessment of the client's genuineness as a temporary resident, and they may be relevant to the client's admissibility to Canada depending on the specific reasons for the undisclosed refusal."

[15] There is no merit to the procedural fairness argument. Since at least October 2020, when the application was first refused, Mr. Husain has known the issue of concern – the non-disclosure of previous US visitor visas. He claims that it was not clear in the procedural fairness letter that there were three visa refusals because the Officer only references US visa refusals in general. The problem with this argument is that the three visa refusals had been referenced in other procedural fairness letters and decisions Mr. Husain received in relation to this application. Moreover, Mr. Husain has not explained how his response to the procedural fairness letter was

hindered by the level of detail provided. In these circumstances, I find that Mr. Husain knew the case he had to meet and was given an opportunity to respond; there is no fairness breach.

[16] Overall, I do not find that Mr. Husain has shown that the decision was made in a procedurally unfair manner or that there was any sufficiently serious shortcoming that requires it to be redetermined. The application for judicial review is dismissed. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-11565-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11565-22

STYLE OF CAUSE: SHAMSHAD HUSAIN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 24, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: DECEMBER 24, 2024

APPEARANCES:

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Hillary Adams	FOR THE RESPONDENT

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