

Federal Court



Cour fédérale

Date: 20250407

Docket: IMM-11657-23

Citation: 2025 FC 628

Toronto, Ontario, April 7, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**ANDRE ALEJANDRO ALVAREZ
GONZALEZ**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a decision by a Migration Officer to refuse his work permit application. In that decision, the Officer also found Mr. Alvarez Gonzales was inadmissible to Canada for a period of five years, because he had misrepresented a material fact

that could induce an error in the administration of the *Immigration and Refugee Protection Act* [IRPA].

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

II. BACKGROUND

A. *Facts*

[3] The Applicant – Andre Alejandro Alvarez Gonzalez – is a citizen of Ecuador. He arrived in Canada in 2019 on a study permit and has applied for and held various visas since then to keep himself in status. On August 8, 2021, the Applicant's post-graduate open work permit expired, and in April 2022 he was advised to leave Canada. He made a number of applications to bridge or restore his status, but each was refused, the last of which was on November 2, 2022. He additionally applied for a work permit in December 2022, which was refused in April 2023.

[4] In May 2023, the Applicant applied for yet another work permit through a new immigration consultant, Mr. Therrien, the refusal of which is the subject for this judicial review. In that application, Mr. Alvarez Gonzalez provided some internally contradictory information, including the following:

- a) He resided in Canada until August 11, 2021;
- b) He resided in Canada and worked for Kangsan Canada between August 11, 2021, and April 2022;

- c) He resided in Canada only until April 2022 and began working in Quito, Ecuador as a freelance web designer in April 2022; and
- d) He resided in Canada until December 8, 2022, as demonstrated by passport stamps provided.

[5] In his application, Mr. Gonzalez included a signed Use of a Representative form, wherein he checked the box stating, “I have fully and truthfully answered all questions on this form and any attached application.”

[6] In August 2023, Immigration, Refugees and Citizenship Canada [IRCC] sent the Applicant a procedural fairness letter [PFL] to express concern over the contradictory information in his application. IRCC also informed Mr. Gonzalez of its concern that he may have misrepresented material facts in his application and may therefore be inadmissible to Canada for five years under s.40 of the IRPA. It noted specifically that there were contradictions in the information he provided regarding his employment and country of residence, and that he had overstayed on a previous visit to Canada. Therefore, IRCC noted that “it appears you did not answer truthfully all questions and you have remained in Canada beyond the date declared in the application.”

[7] In the PFL, the Officer requested that the Applicant provide additional information addressing these concerns, including “explanations of whereabouts and activities in Canada after August 11, 2021.”

[8] The Applicant's representative responded to the PFL and admitted that there were several errors in the application, including that:

- a) The representative had entered an incorrect date as to when Mr. Gonzalez exited Canada and entered Ecuador. He had in fact left Canada and entered Ecuador on December 8, 2022, rather than August 11, 2021 – Mr. Gonzalez had never stated to the representative that he left Canada in August 2021.
- b) The representative had entered an incorrect date for Mr. Gonzalez's self-employment as a web designer. Mr. Therrien mistakenly thought he had begun this work remotely from Canada in April 2022, which is why he designated Quito as the place of work, but in fact, the Applicant only began this work in January 2023, following his return to Ecuador.

[9] By way of conclusion, the consultant stated:

I take responsibility for the information that was provided with his application and the inconsistencies that has led to your concerns. I can affirm that this was not done with the intent to omit, conceal, deceive or misrepresent any material fact. We were trying to prepare his work permit asap, which was regrettably done in haste. I maintain an honest and ethical practice. I was alarmed and dismayed when I saw these errors and inconsistencies.

[10] To support his claim that the inaccuracies in his application were inadvertent errors, the Applicant also indicated that he had disclosed in his original application that he had worked without status in Canada between November 2, 2021, and April 2022. He also noted that he had provided his passport, which contained stamps showing the dates of his re-entry to Ecuador (on December 8, 2022). Therefore, it was clear on the face of the original application that it contained inadvertent errors, and he had not been concealing any of this information.

[11] While Mr. Therrien took responsibility for the errors in the original application, Mr. Alvarez Gonzalez did not reply personally to verify that he had provided accurate information to his counsel. He also did not provide an explanation as to why he had signed forms indicating that he had “fully and truthfully answered all questions on this form and any attached application” when they contained such clear errors.

B. *Decision under Review*

[12] An Officer refused the Applicant’s work permit and found him inadmissible to Canada for five years pursuant to s.40 of the IRPA, for misrepresenting material facts that could induce an error in the administration of the Act. In notes entered into the Global Case Management System [GCMS], the Officer indicated that they considered, but rejected, counsel’s various explanations for the inaccuracies in the application.

[13] In arriving at this conclusion, the Officer highlighted a number of inconsistencies in the Applicant’s information. First, the Officer noted that Mr. Alvarez Gonzalez had claimed to live in Canada until each of these contradictory dates: August 11, 2021, April 2022, and December 8, 2022. The Officer also noted that the Applicant claimed to have worked in Canada only until August 8, 2021, and in Quito as a self-employed web designer since April 2022. The Officer found that this information could have led to an inaccurate assessment of his whereabouts. Further, the IMM 5257 form submitted in his previous WP1 application indicated that he was unemployed in Winnipeg from November 2021 to December 2022. The Officer found this discrepancy was not explained, and noted that the Applicant had submitted bank statements indicating he received a salary in Canada until April 2022.

[14] The Officer additionally stated that Mr. Gonzalez was advised to leave Canada in April 2022, but he decided to remain without status until December 2022.

III. ISSUES and STANDARD OF REVIEW

[15] The Applicant challenges both the reasonableness and the procedural fairness of the Officer's decision. Specifically, the Applicant submits the Officer unreasonably failed to consider the innocent mistake exception; misapprehended the evidence; and erred in finding the misrepresentations were material. The Applicant further submits that the Officer breached his right to procedural fairness by raising an issue in the Decision that was not put to the Applicant in the PFL. Finally, the Applicant argues that the Officer made a number of errors indicating inattentiveness, which undermined the Decision.

[16] The standard of review applicable to the merits of a finding of misrepresentation under s.40 of the IRPA is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]; *Hussein v Canada (Citizenship and Immigration)*, 2024 FC 1629; *Popat v Canada (Citizenship and Immigration)*, 2024 FC 1675. A reasonable decision bears the hallmarks of justification, transparency and intelligibility with the burden resting on the challenging party to show that the decision is unreasonable: *Vavilov* at paras 99-100. Further, the decision must be justified according to the facts and the law constraining the decision-maker: *Vavilov* at para 85.

[17] On issues relating to procedural fairness, the reviewing court must conduct its own analysis of the process followed by the decision-maker to determine whether the process was

fair: *Bharadwaj v Canada (Citizenship and Immigration)*, 2022 FC 1362 at para 8. This approach to review is functionally the same as applying the correctness standard: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (CanLII), [2019] 1 FCR 121 at paras 49-56.

[18] I also note that a finding of inadmissibility for misrepresentation has consequences that transcend the mere rejection of the work permit, most notably the five-year bar on admission to Canada. As such, the justification for such a determination must reflect these important consequences to the individual affected: *Vavilov* at para 133; *Ali v Canada (Citizenship and Immigration)*, 2021 FC 731 at para 30; *Bhatia v Canada (Citizenship and Immigration)*, 2024 FC 698 at para 19 [*Bhatia*].

IV. ANALYSIS

[19] Among several other arguments, the Applicant submits that the Officer erred in failing to consider the innocent mistake exception. I agree with this submission and find it determinative of this application for judicial review.

A. *The Innocent Error Exception*

[20] At the outset, it is important to accurately describe the particular facts that gave rise to the Officer's misrepresentation findings. While the Officer, and indeed the Respondent, describe the inaccuracies in the initial application as being "multiple" and "numerous" there are, in fact, two entries in the application form that give rise to this controversy. The first is the date that the Applicant resided in Canada, which erroneously contained an end date of August 11, 2021. The

second is the date on which the Applicant commenced remote work as a self-employed web-designer, based in Quito Ecuador. The application indicated a start date of April 2022. The Applicant clarified in the response to the PFL letter that he only commenced this work in January 2023, following his return to Ecuador.

[21] As noted above, I find the Officer erred in failing to consider the innocent mistake exception. It is well-established that a finding of misrepresentation under section 40 of the IRPA is a serious matter which should not be made in the absence of clear and convincing evidence: *Bhatia* at para 19; *Chughtai v Canada (Minister of Citizenship and Immigration)*, 2016 FC 416 at para 29; *Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16.

[22] Additionally, this Court has found on numerous occasions that it is unreasonable to find that an individual has engaged in misrepresentation under s.40 where the applicant has demonstrated that they “honestly and reasonably believed that they were not misrepresenting a material fact.” This is the “innocent mistake exception”: *Singh v Canada (Citizenship and Immigration)*, 2022 FC 422 at para 13; *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at paras 18-19.

[23] Here, the Officer failed to consider the innocent mistake exception, despite the detailed correspondence from Mr. Therrien in which he essentially took full responsibility for the errors and inaccuracies in the Applicant’s application. In that correspondence, Mr. Therrien also noted that the erroneous information about the Applicant’s departure from Canada was accompanied elsewhere in the application by the correct information, strongly indicating that the inaccurate information was provided in error. Importantly, Mr. Therrien confirmed that Mr. Gonzalez had

never intentionally withheld material information from IRCC. He also confirmed that it was his office, through both inadvertent error and incorrect assumptions, that had entered the incorrect information into the immigration forms.

[24] The Officer was not necessarily bound to accept that the innocent mistake exception applied. But given the fulsome disclosure of the Applicant's former counsel, and given the fact that the correct information was also contained in the application, it was incumbent on the Officer to meaningfully grapple with the explanations provided, and to consider whether these explanations supported the contention that the inaccuracies in the application were innocent mistakes. In the absence of any consideration of the exception, I find the Officer's reasons lack justification and are therefore unreasonable.

[25] The Respondent relies on *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107 [Ahmed] to argue that the PFL reply was inadequate to trigger consideration of the innocent mistake exception, because the Applicant did not provide his own response to the PFL, leaving out a piece of the evidentiary puzzle. Since he signed the Use of a Representative form, indicating that the information in the application was accurate, the Respondent submits that Mr. Alvarez Gonzalez cannot now rely on his immigration consultant's error to maintain his own innocence.

[26] The Respondent is correct to point to cases such as *Ahmed*, and to underscore the duty of candour that rests with all applicants who seek status in Canada. This Court has also found that the duty of candour includes a duty for an applicant to make sure that when making an application, the documents are complete and accurate: *Goudarzi v. Canada (Citizenship and*

Immigration), 2012 FC 425 at para 40. However, this matter is distinguishable from *Ahmed* and many of the other cases relied upon by the Respondent. The distinction is that in this case the application forms contained both errors *and* accurate information related to the alleged misrepresentations. I do not suggest that the Officer was required to parse through the record to decipher the accurate and inaccurate information. What I do suggest, however, is that this fact – which was squarely put before the Officer – lends significant weight to the Applicant’s claim that the application was prepared in haste, which resulted in innocent form-filling errors. It also firmly establishes that the Applicant did not omit or conceal any information – much of it was there in the record; albeit interspersed with errors. On the question of the Applicant’s departure from Canada, I would also note here that the most logical interpretation of the competing information (the date provided in an immigration form versus a passport stamp confirming re-entry to Ecuador) is that it was the entry in the form that was inaccurate. In other words, the more reliable information in the record would tend to support the Applicant’s claim of innocent error.

[27] Nevertheless, the record before the Officer did contain errors. Given these errors, it was open to the Officer to consider whether, under s.11 of the IRPA, the Applicant had failed to meet the requirements of the Act. A finding that the Applicant had failed to do so may well have been reasonable. However, in these circumstances, I do not believe it was open to the Officer to find the Applicant inadmissible to Canada under s.40 of the Act, without even considering whether the innocent mistake exception applied.

[28] It is clear from Mr. Alvarez Gonzalez’s previous applications that he has had a difficult time navigating Canada’s byzantine immigration system. He has made several attempts to

maintain his status in Canada, each of which was refused because of various deficiencies in the applications. These refusals demonstrate a consistent lack of attention to detail on the part of the Applicant. But given the information that was included in the application under review, and given the consultant's response to the PFL letter, I conclude that the Officer's reasons in support of the misrepresentation finding lacked justification and were, as such, unreasonable.

V. CONCLUSION

[29] Before concluding, I would note that the hearing into this application for judicial review was conducted at the Faculty of Law at the University of Manitoba, with law students and faculty in attendance. I thank the Faculty for hosting this hearing. I also commend both counsel, who provided excellent legal representation for their respective clients.

[30] This application for judicial review is granted. The matter is remitted to a different officer for redetermination. The parties did not propose a question for certification and I agree that none arises.

JUDGMENT in 11657-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.
3. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11657-23

STYLE OF CAUSE: ANDRE ALEJANDRO ALVAREZ GONZALEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: FEBRUARY 20, 2025

JUDGMENT AND REASONS: GRANT J.

DATED: APRIL 7, 2025

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