Federal Court  Cour fédérale

Date: 20250508

Docket: IMM-8317-23

Citation: 2025 FC 850

Toronto, Ontario, May 8, 2025

PRESENT: Madam Justice Go

BETWEEN:

PEZHMAN CHAICHI MALEKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Pezhman Chaichi Maleki [Applicant] is a citizen of Iran who applied for a work permit through an immigration consultant in Iran in May 2022.

[2] On February 22, 2023, the Canadian Embassy in Ankara sent a Procedural Fairness Letter [PFL] to the Applicant, indicating concerns that the Labour Market Impact Assessment

[LMIA] number provided in his application was fraudulent. On March 20, 2023, the Applicant responded to the PFL through an immigration consultant in Canada. The Applicant's representative explained that the LMIA was fraudulent and that the Applicant's consultant in Iran had also defrauded about 500 other applicants in Iran. The PFL response included several documents relating to the legal proceedings in Iran that arose from the fraudulent activities of that consultant.

[3] By way a letter dated May 1, 2023, an Immigration, Refugees and Citizenship officer [Officer] denied the Applicant's work permit application [Decision]. The Officer determined that the Applicant was inadmissible for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*].

[4] The Applicant seeks judicial review of the Decision, arguing that the Decision was unreasonable. For the reasons set out below, I dismiss the application.

II. Preliminary Issues

[5] The Respondent raises a preliminary objection that the Applicant's affidavit contains new information that was not before the Officer. In particular, the Respondent asserts that certain documents in Exhibit A and paragraphs 8-11 in the Applicant's affidavit should not be considered because the Applicant has failed to demonstrate that these comments and supporting materials were ever submitted to the Officer and they appear nowhere in the Certified Tribunal Record [CTR].

[6] Furthermore, the Respondent points out that the Applicant has not sought to have this new evidence admitted under any exception to the general prohibition against filing new evidence: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28. As such, this evidence is inadmissible and the Officer cannot be faulted for failing to reference information that was not provided.

[7] The Applicant did not file any written submissions on this issue. Even at the hearing, counsel for the Applicant made no oral submissions on the admissibility of the impugned evidence.

[8] However, during reply, counsel for the Applicant raised a new argument based on paragraph 8 of the Applicant's affidavit, alleging that "the portal email address, user ID, password and security questions and answers were all kept hidden from [the Applicant]" by the consultant in Iran. After I pointed out to counsel that she was relying on evidence that I have not admitted, counsel argued that that evidence was before the Officer, pointing to one sentence in the immigration consultant's response to the PFL where they stated: "My client surprisingly discovered that they had falsified his documents and submitted them to the Canadian authorities without his knowledge or access to the profile."

[9] I reject counsel's submission. The above-quoted sentence in the consultant's response to the PFL does not come anywhere near to reflect the assertion the Applicant made in paragraph 8

of his affidavit, nor was the consultant's submission supported by any sworn evidence on the part of the Applicant as part of his PFL response.

[10] More importantly, I find it troubling that rather than making a request asking the Court to admit new evidence, or at the very least, making written submission in response to the Respondent's objection to the admission of such evidence, counsel simply waited until the very last moment during her reply to insert an argument based on the impugned evidence. This kind of practice demonstrates a disregard for the Court's procedures and undermines the fairness of the proceedings.

[11] In any event, given that the new evidence in question does not appear anywhere in the CTR and the Applicant has not asked for the evidence to be accepted, I find that the evidence in paragraphs 8-11 of the Applicant's affidavit and one of the documents attached to Exhibit A (p.27 of the Application Record) inadmissible. Further, I will not consider any argument the Applicant seeks to advance based on the inadmissible evidence.

III. Issues and Standard of Review

[12] The Applicant raises the following issues:

a. Did the Officer fail to consider whether the alleged misrepresentation was honestly and reasonably made?

b. Did the Officer disregard the Applicant's submissions that he was a victim of fraud?

[13] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A

reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker:" *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the decision is unreasonable: *Vavilov* at para 100.

IV. Analysis

A. *Relevant Legal Provisions*

[14] Paragraph 40(1)(a) of the *IRPA* provides that a permanent resident or a foreign national is inadmissible for misrepresentation for "directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act."

[15] Paragraph 40(2) further provides, in part, that the foreign national continues to be inadmissible for a period of five years following a final determination of inadmissibility under subsection (1).

B. *The Officer did not err by failing to consider whether the alleged misrepresentation was honestly and reasonably made*

[16] The Applicant submits that the Officer failed to consider that the alleged misrepresentation was honestly and reasonably made. The Applicant argues he was not aware of the misrepresentation, and there was no evidence to establish reasonable grounds to believe "he was [*sic*] known about the misrepresentation."

[17] The Applicant advances the following arguments in support of his position:

a. The Officer did not refer to any of the evidence provided by the Applicant, specifically, documents that contain information about him being a victim of fraud and that it was innocent misrepresentation. As such, the Officer misapprehended the Applicant's submission which led to their failure to properly consider whether the innocent mistake exception applies in this case.

b. The Officer did not analyze how the definition of misrepresentation in subsection 40(1) of the *IRPA* relates to the Applicant, nor did the Officer show any analysis in their notes regarding the Applicant's PFL response to demonstrate that they were not aware of the documentation relating to the fraud.

c. The test for innocent misrepresentation requires an applicant to show that (i) subjectively, the applicant honestly believes they are not making a representation; and (ii) objectively, it was reasonable on the facts that the applicant believed they were not making a misrepresentation.

d. The Officer failed to provide any reasoning as to how they arrived at their conclusion. Thus, the Applicant submits the Officer did not apply the principles set out in the test, and that this failure amounted to an error of law.

e. Section 40 of the *IRPA* does not apply to misrepresentations made honestly by an applicant who reasonably believe they did not withhold material information: *Medel v Canada (Employment and Immigration)*, [1990] 2 FC 345, 1990 CanLII 12991 [*Medel*]; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 [*Baro*] at para 15; *Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 [*Goudarzi*] at para 33; *Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421 at para 14; *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 at para 16.

f. The Applicant's PFL response provided evidence that the exception under section 40 of the *IRPA* applies to his alleged misrepresentation. In his PFL response, the Applicant explained that the knowledge of potential fraud was beyond his control. Thus, the

Applicant submits he reasonably and honestly believed he was not misrepresenting any material facts.

[18] I reject the Applicant's submissions.

[19] While the Applicant does not provide a citation, I note that the test for innocent misrepresentation that the Applicant refers to is described in *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 [*Gill*] at paras 18, namely, (i) that *subjectively* the person honestly believes they are not making a misrepresentation; and (ii) that *objectively* it was reasonable on the facts that the person believed they were not making a misrepresentation. The Court in *Gill* also noted that there appear to be two strains of case law from this Court regarding innocent misrepresentations as an exception to inadmissibility, and that in one strain, an additional requirement has been adopted which considerably narrows the availability of the exception, namely that "knowledge of the misrepresentation was beyond the applicant's control:" *Gill* at paras 18-19.

[20] The Applicant does not address which one of the two strains of case law he seeks to rely on. It would appear, however, that the Applicant adopts the narrow definition of exception as he submits that the knowledge of the potential fraud was beyond his control.

[21] In any event, I find the Applicant's argument ultimately must fail.

[22] The Officer's Global Case Management System [GCMS] notes include the Officer's reasons. The GCMS notes stated, among other things:

> I have reviewed the application submitted along with the explanation to our PFL. Applicant explains through a rep that they were victims of fraud unknowingly, purchased fraudulent LMIAs. However, PA is responsible for the information submitted, including due diligence in ensuring everything submitted is authentic prior to the submission of the application.

[23] Thus, contrary to the Applicant's argument that the Officer misapprehended the Applicant's submission and did not consider his evidence, the Officer's reasons made clear that the Officer did consider the Applicant's submission that he was a victim of fraud and that he had "unknowingly purchased fraudulent LMIAs."

[24] Further, in finding that the Applicant is "responsible for the information submitted, including due diligence" in ensuring authenticity of the materials submitted, the Officer did in fact provide reasons for finding misrepresentation, after having considered the Applicant's submission.

[25] Regarding the Applicant's reliance on *Medel*, *Baro,* and *Goudarzi*, I agree with the Respondent's submission that the paragraphs cited merely state the general proposition that an exception to the foregoing principles apply where an applicant can show that they "honestly and reasonably believed they were not withholding material information." However, as the Respondent argues and I agree, the determinative question is whether the general proposition applies in the case at bar.

[26] In conclusion, the Officer's finding of misrepresentation was reasonable. While the Officer did not explicitly refer to the test, the Officer did consider the Applicant's submission

that he “honestly and reasonably” believed that he did not withhold information, but found, based on the evidence before him, that the Applicant had failed to conduct any meaningful due diligence into the authenticity of the LMIA.

C. *The Officer did not disregard the Applicant’s submissions that he was a victim of fraud*

[27] The Applicant submits that the Officer did not engage with nor weighed the evidence, including evidence indicating that the Applicant had started a lawsuit against his consultant in Iran and that he was a victim of fraud. Additionally, the Applicant argues the Officer failed to explain their reasons. The Applicant cites *Agapi v Canada (Citizenship and Immigration)*, 2018 FC 923 [*Agapi*] at para 17 and *Amini v Canada (Citizenship and Immigration)*, 2024 FC 2052 [*Amini*] at para 9.

[28] I am not persuaded by the Applicant’s submission.

[29] While the reasons were brief, as I have noted above, the Officer acknowledged the Applicant’s PFL response stating that they were victims of fraud. The Officer went to note the Applicant’s responsibility to ensure the authenticity of the documents submitted.

[30] I also find the cases the Applicant cite distinguishable on the facts. In these cases, there was either evidence before the Court indicating the applicant took measures to obtain explanation for the fraudulent document in question, as in the case of *Agapi*, or, in the case of *Amini*, the applicant reported the potential fraud to the immigration authorities.

[31] In this case, the Applicant's only explanation was that he relied on an immigration consultant who engaged in the fraudulent activities.

[32] As in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1135, where the Court did not accept the applicant's arguments that he was using a ghost consultant to justify his misrepresentation and found that the narrow exception of innocent misrepresentation did not apply, I draw the same conclusion in this case.

V. Conclusion

[33] The application for judicial review is dismissed.

[34] There is no question for certification.

JUDGMENT in IMM-8317-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8317-23
STYLE OF CAUSE:	PEZHMAN CHAICHI MALEKI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 7, 2025
JUDGMENT AND REASONS:	GO J.
DATED:	MAY 8, 2025

APPEARANCES:

Anna Davtyan	FOR THE APPLICANT
Jake Boughs	FOR THE RESPONDENT

SOLICITORS OF RECORD:

EME Professional Corp Thornhill, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT