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CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Inadmissible Persons

Judicial review of decision of visa officer with High Commission of Canada in New Delhi refusing applicant's application for study permit, finding him to be inadmissible due to misrepresentation, pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ss. 40(1)(a), 42(1)(a) — Applicant submitted application for study permit made outside Canada which included his Central Board of Secondary Education results — Advised in writing by High Commission that applicant's Indian School Certificate Exam documents not matching upon verification with authorities (Procedural Fairness Letter); was concerned that he had misrepresented material facts concerning his educational qualifications — Letter further advised that if it was found that applicant had engaged in misrepresentation in submitting his application for study permit, he may be found to be inadmissible under Act, s. 40(1)(a); that such finding would render applicant inadmissible to Canada for period of five years according to Act, s. 40(2)(a) — Applicant given 30 days to respond to Procedural Fairness Letter [2] — Applicant's representative, immigration consulting firm, responded to Procedural Fairness Letter; stated that applicant had provided his former immigration consultant with copy of his original secondary school certificate but that former consultant had, without applicant's knowledge, changed graduating marks — Representative also stated that applicant had not been given copy of submitted study permit application but when he learned of problem, he contacted his prior consultant who confessed to altering school records; that applicant gave statement to police, a copy of which was attached to the representative's letter — Also attached to representative's letter was "Affidavit of Support" of applicant which apparently established that misrepresentation was not within applicant's control — Visa officer advised applicant in writing that his study permit application had been refused on grounds that he had been found inadmissible to Canada in accordance with Act, s. 40(1)(a) for directly or indirectly misrepresenting or withholding material facts relating to relevant matter that induced or could induce error in administration of Act — Pursuant to s. 40(2)(a), applicant would remain inadmissible to Canada for period of five years — Further, letter indicating that applicant submitted documentation that lacked authenticity as part of his application, that this diminished overall credibility of his submission — Whether visa officer's decision reasonable — Applicant submitted that visa officer erred by failing to consider whether alleged misrepresentation was honestly, reasonably made; whether it fell within narrow innocent misrepresentation exception as set out in *Medel v Canada (Employment and Immigration)*, [1990] 2 FC 345 — Applicant also submitted that he did not know that his former consultant had submitted fraudulent grades, that visa officer erred in failing to consider totality of evidence in making finding of misrepresentation, that visa officer ignored complaint applicant claimed to have made to police supporting applicant's submission that he was victim of deceit. — Case law pertaining to Act, s. 40(1)(a) previously summarized — Section 40(1)(a) is to be given broad interpretation in order to promote its underlying purpose: its objective being to deter misrepresentation, maintain integrity of immigration process — To accomplish this, onus is placed on applicant to ensure completeness, accuracy of their application; applicant having continuing duty of candour to provide complete, honest, truthful information when applying for entry into Canada — Exception to s. 40(1)(a) is

narrow, applies only to truly extraordinary circumstances where applicant honestly, reasonably believed that they were not misrepresenting material fact, that knowledge of misrepresentation was beyond applicant's control, i.e. applicant subjectively unaware that they were withholding information — Here, applicant not disputing that misrepresentation occurred, submitted that he provided his original grades document to this former consultant, did not know that his former consultant had submitted fraudulent grades document after applicant signed his application; that this knowledge was beyond his control — When considering whether individual to be found inadmissible pursuant to Act, s. 40(1)(a), applicant must have acted with subjective intent, i.e. knowledge of misrepresentation — General rule is that misrepresentation can occur without applicant's knowledge; that s. 40 applying to applicant where misrepresentation was made by another party to application, applicant having no knowledge of it — With respect to innocent misrepresentation exception, problem in present case was that response to Procedural Fairness Letter stated that applicant not aware that his former consultant had changed original graduating marks, which applicant had provided to consultant, because he had already signed forms prior to this change being made — Further, applicant not given copy of application when it was submitted — Had visa officer found, based on record, that applicant's explanation for misrepresentation not supported by evidence, then visa officer may not have been required to consider innocent misrepresentation exception — However, although explanation offered in response to Procedural Fairness Letter clearly raised issue of innocent misrepresentation exception, visa officer made no finding as to whether exception applied, rejected applicant's explanation solely on basis that applicant solely responsible for his application — Visa officer entitled to give brief reasons when deciding study permit visa application as long as those reasons are responsive to factual matrix put before them — In present case, was not apparent from visa officer's reasons that they considered applicant's submissions; having done so, rejected applicant's explanation on basis that explanation not supported by evidence or otherwise — Visa officer not referring to complaint to police or applicant's affidavit; their analysis began, ended when finding that applicant solely responsible for his application — Because visa officer found that applicant solely responsible for his application, did not consider whether misrepresentation was innocent or if exception had application — Had to determine whether visa officer should at least have considered whether exception applying — If not, visa officer required to justify that determination — Despite concerns regarding submissions made on behalf of, by applicant, lack of evidence supporting some submissions, visa officer made no assessment of, or findings with respect to, applicant's submissions — Also, did not make any determination that innocent misrepresentation exception having no application — Therefore, visa officer erred in failing to consider whether innocent misrepresentation exception had application in matter before them — Application allowed.

PANDHER V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-7196-19, 2022 FC 687, Strickland J., reasons for judgment dated May 10, 2022, 20 pp.)