

THE HITCHHIKER'S GUIDE TO A40 PROCESSING

LDN RAU - 2024

MISREPRESENTATION IN IRPA

- **MISREPRESENTATION**
 - **40 (1)** A PERMANENT RESIDENT OR A FOREIGN NATIONAL IS INADMISSIBLE FOR MISREPRESENTATION
 - (A) 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; ...

A40: PURPOSE AND SCOPE

- **Purpose:** to encourage applicants to provide complete, honest and truthful information when applying for entry into Canada.
- The provisions are broad enough to cover a range of scenarios to encourage compliance with the legislation and support the programme integrity;
- The application of the provisions, however, should be guided by the use of good judgment to support the objectives of the Act and ensure fair and just decision-making.

...MATERIAL FACTS RELATING TO A RELEVANT MATTER THAT INDUCES OR COULD INDUCE AN ERROR...

- What is a material fact?
- What is a relevant matter?
- What is procedural fairness?
- Is procedural fairness always required?

TO PF OR NOT TO PF?

PF required

Serious inadmissibility

Issues of credibility

Extrinsic evidence

PF not required

Insufficient or ambiguous
evidence

Requirement in IRPA/ IRPR

PRINCIPLES OF A40 ASSESSMENTS

- Applicants are responsible for the completeness and accuracy of their applications
- Intention is not a prerequisite
- The misrepresentation need not be decisive or determinative of the application
- Misrepresentation may occur at any point in the application process
- Assess the materiality
- Address any response – even if weak.
- Apply the correct test

DOCUMENTING THE CASE

- What is the concern? What action are you taking?
- The PFL must inform the applicant of the case to be met and the applicant must be given the opportunity to provide a meaningful response.
- Interview versus PFL
- Assessment notes must make the materiality explicit.
- Final decision notes must indicate that the right test was used and that all the evidence was considered.
- The final decision should not be made before the end of the period granted to respond – even if the applicant has submitted a response.
- Use conditional rather than declarative statements and avoid hyperbolic language.

REVIEWING THE RESPONSE

- Review the response in its entirety.
- In your assessment show that you reviewed the response and considered the arguments put forward regardless of the quality of said arguments.
- Intent is not a prerequisite.
- Providing a correction in response to the procedural fairness letter does not cure the materiality of misrepresentation.

ASSESSMENT NOTES VERSUS PF LETTER

Assessment Notes

- An analysis not a conclusion.
- Explicit reasoning, show your thinking in extensive detail.
- Describes the materiality of the concern.
- *How we know.*
- Conditional language.

PF Letter

- An interim conclusion based on the analysis.
- Describes the case to be met; sufficient detail.
- Reasoning is implicit, materiality assumed.
- *What we know.*
- Conditional language.

GOOD NOTE? BAD NOTE? INITIAL CONCERN

- Info alert. Send PFL.

Info alert indicates that the application fits a known fraud pattern where the employment reference and bank statement are recycled and altered to the specific applicant. Please send PFL.

- I'm convinced that the PA has lied on his application. Will still send PFL in the interests of procedural fairness.

The PA declares never having been refused a visa by any country, however, info-sharing shows that she was refused a USNIV in 2019. Please send PFL.

- PA doesn't have enough funds, probably fraud. Send PFL.

BAD NOTE? GOOD NOTE? PROCEDURAL FAIRNESS

- You attended an interview on September 18, 2024 which began at 9:02 am. After introducing myself and confirming that you could understand me, I confirmed your personal details. During the interview you provided details about your employment history, however, these details don't match exactly with what you had stated on previous applications. When I confronted you with these discrepancies your response was self-serving and unconvincing.

During your interview of September 18th, you provided an employment history which had several discrepancies with the employment history you provided on earlier applications. I was not satisfied with your responses at interview, however, I recognize that you had not been advised beforehand that this may be a subject of inquiry during the interview. To give you an opportunity to fully address my concerns I'm granting you 30 days to provide a response before proceeding to a decision.

- I have reasonable grounds to believe that you have committed fraud by submitting fake documents. You have 5 days to provide a response.

It appears that the bank statement and residency permit that you provided are fraudulent. You have 30 days in which to respond to these concerns.

GOOD NOTE? BAD NOTE? REVIEW AND RECOMMEND

- I have reviewed the PA's response to our PFL and it doesn't seem relevant to the matter at hand. Recommend A40.

In response to the PFL the PA provided a copy of all pages of her ppt showing extensive travel and a character reference from a local politician. Neither of these submissions address my concern related to the fraudulent employment reference. The PA's employment is a material fact which is relevant to the decision as it relates directly to the PA's establishment, financial resources, and credibility. Misrepresentation of this fact may induce an error in the administration of the Act by preventing an accurate assessment. File referred to UM for A40 decision.

BAD NOTE? GOOD NOTE? REVIEW AND RECOMMEND

- The PA submitted multiple documents that have all been found to be fraudulent.

been altered to include the PA's name and alleged address,

The bank statement has

The PA's pay slips are also fraudulent and are recycled documents that appear on multiple applications.

The PA responded to our PFL stating that everything he submitted was genuine. A clear case of misrepresentation, referred to manager for final A40 decision.

In response to our PFL the PA states that all the documents he submitted are genuine. He provides little evidence to support this statement. The documents in question relate to the PA's establishment here, financial resources, and credibility; as such, they are material to the decision at hand. Accepting these documents at face value may induce an error in the administration of the Act by leading me, the officer, to base my assessment on inaccurate information. File referred to the unit manager for possible A40 decision.

- In response to our PFL the PA has failed to provide any convincing evidence that would disabuse me of my concerns vis-a-vis the undeclared US refusal for moral turpitude. Recommend A40 to the UM.

GOOD NOTE? BAD NOTE? MAKING A RECOMMENDATION – STILL

- The PA failed to declare a previous USNIV refusal. In response to the PFL the PA replied that it was just a simple error. Her representative completed the forms for her, and she thought he only meant previous refusals to Canada. She further states that she doesn't remember the refusal as it was some time ago and she wasn't given any reasons for the refusal. Use of a rep is irrelevant as it remains the PA's responsibility to ensure the completeness and accuracy of the application. In addition, given that the refusal was more serious than a simple "don't meet the requirements" refusal and occurred two years ago, I am not satisfied with the "don't remember" explanation. I'm also not satisfied with the claim that she was not informed of the reasons for the refusal as the US interviews most applicants and provides reasons both verbally and in writing. It is my opinion that the US refusal is a material fact which is relevant to the decision as it speaks to the PA's credibility as a bona fide temporary resident. The misrepresentation of this information may have induced an error in the administration of the Act as it prevented me, the officer, from having complete and accurate information on which to make my assessment. File referred to the unit manager for A40 consideration.

BAD NOTE? GOOD NOTE? FINAL DECISION

- Really good summary, Augustine. Application refused on A40.

I have reviewed the application including the reviewing officer's assessment and the PA's response to the PFL. The bank statement provided had been deemed to be fraudulent and the PA's response does not disabuse me of that concern. The genuineness of the bank statement is a material fact which is relevant to the decision as it speaks to her establishment in the country of residence, ability to afford the trip to Canada, and overall credibility as a bona fide temporary resident. I agree with the officer's assessment that, on balance of probabilities, this misrepresentation may have induced an error in the administration of the Act so I am refusing the application on section 40 of IRPA.

- The officer has provided a strong analysis of the case and I don't find the PA's response to be compelling. I conclude that there are reasonable grounds to believe the that PA has misrepresented herself. Application refused.

I have reviewed the application including the officer's assessment and the PA's response. The latter does not directly address the concern raised over the fraudulent nature of the residency permit. As the permit is directly related to the PA's establishment here and overall credibility as a bona fide temporary resident it is a material fact related to a matter relevant to the decision. Given the information available, I am satisfied, on balance of probabilities, that the PA is described by section 40 of IRPA. Application refused.

GOOD NOTE? BAD NOTE? PUTTING IT ALL TOGETHER

- Note 1: The bank statement on file appears to be a recycled document.
- Note 2: Please send a PFL with the following: specifically, there are reasons to believe that your bank statement is fraudulent.
- Note 3: The PA has responded to our PFL with a letter explaining that it was a misunderstanding. His brother helped him complete his application and accidentally submitted the wrong document. PA also provided a different bank statement.

GOOD NOTE? BAD NOTE? STILL PUTTING IT ALL TOGETHER

- Note 4: I have reviewed the file and the PA's response to the PFL. The bank statement appears to be fraudulent,

The pa responded to the PFL by providing a different bank statement and explaining that his brother accidentally submitted the wrong document. I do not find the PA's explanation to be credible as he can't explain why the fraudulent statement exists in the first instance. It does not seem reasonable that you would create a fraudulent document but have no intent to use it in some manner. Even if the PA created the document for another purpose and didn't intend to submit it with this application, the fact remains that he did submit it and it is what he did and not what he intended to do that is relevant to this assessment. I have not considered the new bank statement. Even if it is genuine this does not cancel the submission of a fraudulent document. The bank statement is a material fact which is relevant to the decision as it speaks to the PA's establishment in the country of residence, financial resources, and overall credibility as a bona fide temporary resident. File referred to Unit Manager for final decision.

- Note 5: I have reviewed the application, PA's submissions, and the officer's assessment. The PA admits that the bank statement is fraudulent but argues it was submitted in error. Intent notwithstanding, the fraudulent document may have induced an error in the administration of the Act by preventing the officer from conducting a fair assessment of the application based on accurate information. Based on the information available, I am satisfied, on balance of probabilities, that the pa has misrepresented a material fact which is relevant to the decision. Application refused pursuant to section 40 of IRPA.

Post-refusal, the PA writes to complain that the officer was biased.

A FEW HANDY NOTES ON NOTES

- Write clearly and use plain language – you are writing to inform not entertain.
- Use neutral terms, dispassionate language, avoid editorializing, avoid acronyms, and do not use exclamation marks!!!!
- Use the language of the Act whenever you can.
- Avoid using absolute terms or unsubstantiated statements.
 - No evidence
 - Evidence is self-serving
 - Vague/ lacks detail

YOU HAVE QUESTIONS?

I may have some answers.