Filipiniana News – August 2011
RHYME & REASON

The Misrepresentation Trap

In Canadian immigration law, misrepresentation is defined as "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 act."

The words "directly or indirectly" imply that the act of misrepresentation may have been committed by the applicant/permanent resident or by other people. Direct misrepresentation is quite self-explanatory (although it may also be subject to legal interpretation). However, it is the "indirect" type of misrepresentation which remains largely misunderstood, catches many people unaware and can lead to the unduly harsh application of Canada's immigration laws.

Indirect misrepresentation could mean that the unscrupulous act of representatives such as placement agents may prejudice an applicant regardless of the latter's lack of knowledge of the misrepresentation committed. The real culprits on the other hand, often avoid punishment due to the power imbalance (financial or political) which discourages victims from pursuing the often protracted, complex and expensive judicial or administrative options of seeking redress.

A situation that many prospective caregivers to Canada find themselves in is that of being "released upon arrival". This means that the caregiver actually has no employer upon arriving in Canada because the sponsoring employer either does not exist or does not anymore require the services of the employer. Regardless of the reason, Canada Border Services Agency (CBSA) officers can find the caregivers in these situations guilty of misrepresentation because they are assumed to have misrepresented about the non-existence of the employer named in their work visas. In many cases however, these prospective caregivers are not aware of the placement agencies' apparent *modus operandi* of asking "employers" to sign the employment contracts and LMO applications even though these "employers" have no intention of hiring the caregivers in the first place. When the caregivers hired by these agents arrive in Canada on a work permit, they are immediately "released" by the original "employers" and made available by the placement agencies to other genuine employers who wish to hire caregivers *pronto*. These genuine employers usually do not want to wait the several months (or even as long as two years for caregivers coming directly from Manila) that it takes for LCP work permit applications to be processed. To address the great demand for readily available live-in caregivers therefore, the highly-competitive world of caregiver placement agencies shrewdly came up with the concept of "released upon arrival" caregivers. The more caregivers they have in their pool, the quicker they can meet the demands of Canadian employers for an immediately employable caregiver (although they will of course need to obtain a labour market opinion and another work permit, which is another story).

Some people may also be unknowingly caught in the "misrepresentation" trap when earlier on in their original immigration applications, immigration consultants or

representatives advise the applicants (or do so on their own without even notifying the applicant) to remove the names of other dependents or family members or misdeclare marital status to supposedly avoid delays or complications in the applications. All might seem well and the permanent resident visas are issued, until the time that the permanent resident decides to sponsor other family members – when the immigration officer reviewing the file realizes that the dependent or family member was previously not declared in the sponsor's original application or that the marriage was not disclosed. Since these types of misrepresentation are deemed "material", these could lead to inadmissibility proceedings against the permanent resident aside from the refusal of the sponsorship application under Section 117(9)(d) of the Immigration and Refugee Protection Regulations.

To avoid being caught in the "misrepresentation" trap, applicants must be very wary of representatives or consultants who advise prospective immigrants to lie in their applications, to manipulate or misdeclare facts and/or submit falsified documentation. If they are advising these to simplify your application and perhaps avoid further work or losing your business altogether, then they are not truly representing your best interests.

For caregivers in particular, they should be well-advised to ensure that the employment contracts that they are signing are genuine and with terms that are in accordance with Canadian labour standards. The caregivers should be able to communicate with their prospective employers directly to ensure that they are aware of the possible long processing times, and are nonetheless intending to hire the caregiver upon the issuance of the work visa. Only then can the caregiver be better assured that the immigration officer will issue the work permit upon arrival at the border, after having been convinced of the caregiver's, as well as the employer's genuine intentions.

Meanwhile, there is clearly a fundamental injustice in a system which perpetrates further victimization (i.e. caregivers being deported due to indirect misrepresentation) and impunity for those directly responsible (i.e. the placement agents who facilitated the fake employment contracts or committed the misrepresentation). Therefore, the government must be equally vigilant in prosecuting and discouraging these unscrupulous practices which take advantage of the applicants' earnest desire to work in or immigrate to Canada.

Immigration officers often justify their strict enforcement actions as simply meant towards "preserving the integrity of Canada's immigration system." I am not sure that this objective is truly met if their actions are focused on punishing the victims while the culpable ones remain scot-free and able to victimize more applicants. Although Canada's immigration laws were recently amended to introduce measures meant to better regulate immigration consultants (and crack down on so-called "crooked consultants"), it remains to be seen how effective these changes will be in protecting the interests of prospective workers or immigrants especially those dealing with ghost consultants, or those based overseas and are thus beyond the reach of Canada's domestic legal system.

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