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RHYME & REASON

Misrepresentation Issues

By Maria Deanna P. Santos

Misrepresentation in the context of immigration law can be a tricky concept. Hence, some people are caught by surprise when found inadmissible to Canada on this ground. They learn too late that some act or omission they were not completely aware of, or some seemingly innocent wrongful declaration could either result in a denial of their immigration application, or worse, the stripping of their permanent resident status.

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. Unfortunately for the applicant, the unscrupulous act of representatives or placement agents may prejudice his or her immigration status. The real culprits on the other hand, feel immune from any negative consequences owing to their Canadian citizenship status and/or by the often protracted, complex and expensive judicial and other modes of seeking redress, thereby discouraging many from pursuing such route.

For instance, prospective caregivers to Canada who are destined to be "released upon arrival" are considered by Canada Border Services Agency (CBSA) officers to be guilty of misrepresentation because they are not meant to be employed by the employers named in their work visas. This, despite the fact that the caregiver was not directly aware of the misrepresentation "indirectly" committed by another to support the caregiver's application. As is often the case, these prospective caregivers are not aware of the placement agencies' *modus operandi* of paying "employers" to sign the employment contracts and LMO applications even though these "employers" have no intention of hiring the caregivers in the first place. What happens is that once the caregivers 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 instant live-in caregivers therefore, the highly-competitive world of caregiver placement agencies have shrewdly created the phenomenon of "released upon arrival" caregivers. The more caregivers they have in their pool, the quicker they can meet the demands of Canadian employers for a readily employable caregiver.

Another way by which some people are unknowingly caught in the "misrepresentation" trap is when earlier on in their original immigration applications, their immigration

consultants or representatives advised the applicants (or did so on their own without even notifying the applicant) to remove the names of other dependents or family members or misdeclare marital status to avoid causing 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 marital status was misdeclared. Since these types of misrepresentation are deemed "material", these could lead to the commencement of inadmissibility proceedings against the permanent resident and/or the denial of the sponsorship application.

It is therefore strongly advised that to avoid being caught in the "misrepresentation" trap, applicants must be very wary of advisors or consultants who advise prospective immigrants to lie in their applications, to manipulate or misdeclare facts and/or submit falsified documentation. If these advisors are advising these to simplify your application and reduce work for themselves, then they are not truly representing your best interests.

For prospective caregivers and those with family members from overseas applying as live-in caregivers in Canada, it will be best to advise them to ensure that the employment contracts are genuine and with terms that are in accordance with Canadian labour standards. To confirm these, the caregivers should be able to communicate with their 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 assured that the CBSA will be convinced of the caregiver's, as well as the employer's intentions, which will lead to the issuance of the work permit upon arrival at the border.

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.

I have often heard CBSA officers justifying 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 the sole action is to punish the victims while the culpable ones remain scot-free. But that can be the subject of another column…

The author would be interested to receive any feedback and may be reached at mdsantos@osgoode.yorku.ca