

Federal Court



Cour fédérale

Date: 20170223

Docket: IMM-2958-16

Citation: 2017 FC 224

Toronto, Ontario, February 23, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

YESHI LHUNDUP

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] Mr. Yeshi Lhundup (the “Applicant”) seeks judicial review of the decision of a Visa Officer (the “Officer”) refusing his application for a permanent residence visa for entry into Canada. The application for judicial review was allowed from the Bench; these are the reasons for that disposition.

[2] The Applicant is a stateless Tibetan. He married his wife, also a stateless Tibetan, on January 26, 2007. In 2011, his wife came to Canada, together with her parents and the child of her first marriage. The wife was granted Convention refugee status in Canada in 2011.

[3] The Applicant attended an interview with the Officer on May 30, 2016. He was questioned about his relationship with his wife, including the circumstances in which they met and the events leading to their marriage.

[4] The Officer concluded that the marriage was not genuine. In setting out the reasons for that conclusion, the Officer focused upon the 24 year difference in their ages and their inevitable inability to conceive and bear children.

[5] A decision of an officer about the genuineness of a marriage, for the purposes of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) is reviewable upon the standard of reasonableness; see the decision in *Nahal v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 81.

[6] The “reasonableness” standard requires that the decision be justifiable, transparent and intelligible, and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[7] The Applicant raised several arguments, including a challenge to the reasonableness of the decision.

[8] The Minister of Immigration, Refugees and Citizenship (the “Respondent”) submits that the Officer made no reviewable errors in the decision and that the decision is reasonable.

[9] I agree with the submissions of the Applicant, that the Officer unreasonably focused on the age difference of 24 years between his age and that of his wife.

[10] It is not necessary for me to review the other submissions of the parties.

[11] The application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to another Officer for re-determination, there is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Visa Officer is set aside and the matter remitted to another Officer for re-determination, there is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2958-16

STYLE OF CAUSE: YESHI LHUNDUP V MIRC

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 21, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 23, 2017

APPEARANCES:

Toni Schweitzer

FOR THE APPLICANT

Catherine Vasilaros

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Parkdale Community Legal
Services

FOR THE APPLICANT

Barristers & Solicitors

Toronto, Ontario

William F. Pentney, Q.C.

Deputy Attorney General of

Canada

FOR THE RESPONDENT