Federal Court Cour fédérale

Date: 20181119

Docket: IMM-516-18

Citation: 2018 FC 1139

Toronto, Ontario, November 19, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

RYAN NELSON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ryan Nelson [the Applicant] seeks judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a January 12, 2018 decision [Decision] by an immigration officer [Officer] of the Immigration and Refugee Board. The Officer was not satisfied that the Applicant met the requirements of the Spouse or Common-Law Partner in

Canada Class and refused the application. For the reasons that follow, the application for judicial review is dismissed.

II. Background

[2] The Applicant is a citizen of Saint Lucia who first entered Canada on February 27, 2007 and was admitted as a temporary resident. On April 25, 2008, he was arrested but not charged by the Toronto Police Services and was released on bond. The Applicant applied for a pre-removal risk assessment which was denied on November 10, 2008, and he was removed from Canada to Saint Lucia on December 18, 2008. His exclusion order required that he obtain an Authorization to Return to Canada [ARC] if returning within a year under subsection 52(1) of IRPA.

[3] Within about a month after returning to Saint Lucia, the Applicant changed his name to "Ryehan St. Marthe". He applied for and received a Saint Lucian passport with his new name on March 2, 2009, using it to re-enter Canada on April 5, 2009, without having applied for an ARC, or disclosing his previous name or his immigration history.

[4] According to the Applicant, he met his wife [the Sponsor] on July 29, 2014. They claim to have dated for several months before the Sponsor proposed to the Applicant on January 29, 2015. On February 24, 2015, the Applicant applied to Saint Lucia to revoke his name change and change his name back to "Ryan Nelson", and then applied for and was issued a Saint Lucian passport with his original name on May 6, 2015. The Applicant and the Sponsor married on September 5, 2015.

[5] The Applicant applied for permanent resident status under the Spousal Class on June 15, 2016. On request of Citizenship and Immigration Canada, the Applicant and the Sponsor attended an interview on December 19, 2017 [the Interview] to determine whether their spousal relationship was genuine. At the conclusion of the Interview, the Officer allowed the Applicant to provide additional documentation to support his case, which he did.

[6] The Officer issued her negative Decision on January 12, 2018, due to a non-genuine marriage, finding that the Applicant entered into the marriage primarily for the purpose of acquiring status under the Act, thus failing to meet the spousal requirements. She wrote a section 44(1) report alleging that the Applicant was inadmissible to Canada due to his unauthorized re-entry in 2009, having failed to obtain an ARC.

III. Issue and Analysis

[7] While the Applicant raised several issues in his written application and submissions, at the hearing Applicant's counsel conceded that she would not argue any further issues if she could not demonstrate that the Officer's decision regarding *bona fides* of marriage was unreasonable. Indeed, this was the outcome of the hearing, as was conveyed to the parties, with these reasons to follow.

[8] A standard of reasonableness applies to the review of marriage *bona fides* (*Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 at para 17). Section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] reads as follows:

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	4(1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	b) n'est pas authentique.

[9] Both parties agree that the Applicant bears the onus of establishing a genuine relationship through the evidence provided, and that the Officer assesses the genuineness of the relationship by weighing this evidence (*Mustafa v Canada (Citizenship and Immigration)*, 2008 FC 564 at para 26). However, the Applicant contests the reasonability of both the evidence considered, as well as the conclusions drawn from the evidence.

[10] Specifically, the Applicant asserts first that the Officer overlooked key evidence, including letters, banking information, and other documentation establishing a *bona fide* relationship. Second, the Applicant asserts that the supposed discrepancies identified by the Officer in the Applicant's and Sponsor's testimony were not actually inconsistent, but rather demonstrative of a genuine relationship. Both assertions are analyzed below.

A. *Did the Officer unreasonably ignore evidence?*

[11] The Applicant argues that the Officer ignored the evidence demonstrating that his marriage to the Sponsor was genuine, and instead focussed on a few discrepancies in their testimony. This, he argues, renders the Officer's decision unreasonable. The Applicant provided evidence to demonstrate genuineness of his relationship including photographs, letters of support, and evidence of trips. Additionally, the Applicant claims that the Officer ignored evidence establishing that he and the Sponsor share a common address. While the Officer did indicate in her reasons that the "[d]ocuments in support of their relationship [were] noted", the Applicant alleges that she ignored these documents.

[12] The Respondent counters that the Officer weighed all of the evidence put before her. While some of the Applicant's evidence suggests his relationship was genuine, the Officer ultimately found that was outweighed by the evidence suggesting the relationship was not.

[13] I agree with the Respondent that the Officer drew wholly reasonable findings from the evidence, explaining various problems and deficiencies in the documents, including failure to establish dates and a common address. The Officer is not required to address, nor to provide reasons why she rejecting every piece of documentary evidence put before her. Here, the Officer noted the key evidence.

B. *Did the Officer err in finding the discrepancies regarding the engagement and cohabitation inconsistent?*

[14] The Officer decided the relationship was not genuine in part due to three central discrepancies based on the Applicant's and Sponsor's testimony at the Interview, and the documentary evidence provided. These discrepancies involved the couple's (a) first date, (b) marriage proposal, and (c) cohabitation date. The Applicant argues that the supposed discrepancies identified by the Officer were adequately addressed by their responses to her questioning, and supported by the documentary evidence.

[15] Once again, I find the Officer drew eminently reasonable conclusions, given the significant discrepancies in the accounts of these three seminal events in the Applicant's marriage.

[16] First, they differed regarding what they did on their first date. Second, their engagement stories diverged, including what they were doing at the time, where they were in the home, and if a ring was involved. Third, there was a discrepancy in their accounts of the date on which they began cohabiting. The Officer reasonably found that none of the explanations offered were satisfactory.

[17] The Respondent stressed, and I agree, that the Officer's conclusions drawn from the three discrepancies were all reasonable observations, particularly when considered in the context of the Applicant's past, who, as stated in the Decision:

> . . . has shown a pattern of disobeying the conditions of entry and a disregard for immigration laws. It appears that he is motivated to remain in Canada and based on his pattern of activities, l am not satisfied that this relationship was not entered into for the purpose of facilitating his application for permanent residence in Canada.

[18] The Officer was entitled to consider the Applicant's immigration history in her analysis (*Aburime v Canada (Citizenship and Immigration)*, 2015 FC 194 at para 23).

[19] It was open to the Officer to consider the initial motivation for entering into the marriage (*Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 at paras 27–28). The circumstances regarding the conception of the relationship and its initial purposes are the proper province of the decision-maker in light of the wording of section 4 of the Regulations, whether or not that marriage has evolved into a genuine one in the years since (*Vo v Canada (Citizenship and Immigration)*, 2018 FC 230 at para 46).

IV. Conclusion

[20] It was reasonable for the Officer to conclude from the evidence, inconsistencies and past immigration history that the Applicant's relationship was entered into primarily for immigration purposes. The application is dismissed. Neither party raised a question for certification and I agree that none arises.

JUDGMENT in IMM-516-18

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and none arose.

3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-516-18
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APPEARANCES:

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