

Federal Court



Cour fédérale

Date: 20190703

Docket: IMM-3639-18

Citation: 2019 FC 885

Ottawa, Ontario, July 3, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

BAHAA WAKED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Waked, is a citizen of Lebanon. His spousal sponsorship application was refused, the Citizenship and Immigration Canada Officer [Officer] having concluded his marriage was not genuine.

[2] In seeking judicial review of the Officer's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], Mr. Waked argues the Officer breached procedural fairness in a number of ways and unreasonably focused on the couple's financial arrangements.

[3] The respondent submits that the Officer reasonably found the couple had not proven a sufficient level of codependence and that a breach of procedural fairness has not been established.

[4] The application is dismissed for the reasons that follow.

II. Background

[5] Mr. Waked met his spouse, Ms. Nour Khatib, in 2004 at an engagement party in Lebanon, where she was residing at the time. Ms. Khatib immigrated to Canada in 2005 and is a Canadian citizen.

[6] Ms. Khatib returned to Lebanon in 2009 to visit family, and Mr. Waked reports that they began a relationship at that time. This relationship continued after her return to Canada. Mr. Waked visited Ms. Khatib in Canada in 2013 on a temporary resident visa and remained in Canada on a study permit. He resided with Ms. Khatib's family during this time.

[7] The couple were engaged in July 2014 and married in April 2015 in a religious ceremony. After their marriage, they began living together in the master bedroom in Ms. Khatib's family home.

[8] Mr. Waked filed his spousal sponsorship application in July 2016. By letter dated July 9, 2018, the Officer refused the application, finding the marriage was not genuine.

III. The Decision under Review

[9] The Officer accepted that Mr. Waked and Ms. Khatib had lived in the same home since 2013 and on this basis noted that "[i]t is expected that a couple sharing the same residence for a period of time would become familiar with each other, their daily routine and activities" and found that they were "sufficiently familiar with each other."

[10] In addressing photos taken at the wedding, the Officer noted they were "very informal and impersonal" as guests were wearing street clothes. When asked about this, Ms. Khatib had said she liked simple things; however, the Officer found this was inconsistent with Mr. Waked's statement that Ms. Khatib liked to "dress up and go to fancy places." Further, the Officer noted the photos at the wedding celebration did not show any friends or family. The Officer did not accept the explanation that the couple was not able to provide more photos of the celebration as their computer had crashed, finding they could likely have obtained photos from other guests in attendance.

[11] The Officer was not satisfied with: (1) the answers given for closing a joint account and not creating another, noting Mr. Waked did not have direct access to Ms. Khatib's personal account despite having access to her credit card and bank card; (2) the explanation provided by the couple for having individually provided different explanations for a large bank balance in Ms. Khatib's bank account; (3) Mr. Waked's lack of knowledge relating to the transfer of another significant sum of money from his spouse to her parents; and (4) the explanation provided for Mr. Waked not being included on his spouse's work benefits after she commenced a new job in March 2018.

[12] The Officer concluded that although the couple lived together and were familiar with each other, they had not provided "sufficient information to support joint financial or common affairs," given the length of their relationship. They had not "provided sufficient substantive information to support a level of codependency or cohabitation in a marital relationship as would reasonably be expected in a genuine marital relationship."

IV. Issues and Standard of Review

[13] The application raises the following issues:

- (1) Did the Officer act unfairly?
- (2) Was the Officer's finding that the marriage was not genuine unreasonable?

[14] The issue of fairness will be reviewed against a standard of correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The question

as to whether or not the Officer's decision was reasonable involves questions of mixed fact and law that are to be reviewed against a standard of reasonableness (*Rahman v Canada (Citizenship and Immigration)*, 2013 FC 877 at para 13).

V. Analysis

A. *Did the Officer act unfairly?*

[15] Mr. Waked submits the process was unfair in several respects.

[16] First, he submits that in the course of the interview, the Officer alleged a "poison pen" call had been received but failed to provide sufficient details about it and did not address this aspect of the interview in her notes. Mr. Waked argues that although the Officer denies having received or raised a poison pen call, her interview notes omit other aspects of the interview and therefore her recollection should not displace his clear, sworn evidence in this regard. He further submits that the Officer does not deny the existence of the call but rather says she did not receive a call.

[17] Second, Mr. Waked submits that interpretation problems rendered the process unfair. He argues the interpreter misinterpreted his statements relating to the source of a significant amount of money in Ms. Khatib's account and the Officer prevented him from correcting these errors. He again argues that the Officer's notes are demonstrably incomplete and that the absence of any reference to interpretation problems having been raised renders it plausible that she did not

record this interaction. In any event, he argues the interpretation issue denied him the opportunity to be heard.

[18] Third, it is argued that the Officer also acted unfairly by not requesting proof of the source of the funds in Ms. Khatib's account. Mr. Waked submits such proof was available but the couple was effectively discouraged from providing it.

[19] Finally, Mr. Waked notes the certified tribunal record [CTR] does not include photos that were referred to by the Officer in her decision. He relies on *Akram v Canada (Citizenship and Immigration)*, 2018 FC 1105 [*Akram*], at paragraphs 16 to 23 to argue that this is a breach of procedural fairness.

[20] None of these arguments are persuasive.

[21] Mr. Waked's assertion that the Officer's decision was impacted by a poison pen call is not consistent with the contents of the Officer's decision or interview notes. The Officer also attests that no poison pen call was received.

[22] In cases where there is disagreement between an applicant's recollection and the contents of an officer's notes, this Court has typically relied on the officer's lack of interest in the outcome and the contemporaneous nature of the officer's notes in preferring the officer's version of events (*Sellappa v Canada (Citizenship and Immigration)*, 2011 FC 1379 at paras 70–71; *Khela v Canada (Citizenship and Immigration)*, 2010 FC 134 at para 18; *Pompey v Canada*

(*Citizenship and Immigration*), 2016 FC 862 at para 36; *Alvarez Vasquez v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1083 at para 53). Mr. Waked submits that in this case, the Officer's notes should not be preferred as (1) they do not reflect the Officer's questions to establish that the interpreter and Mr. Waked understood each other and are therefore demonstrably incomplete, and (2) the Officer only denies receipt of a poison pen call, not the existence of such a call.

[23] Neither argument is persuasive. The absence of a reference to the adequacy of the interpretation in the Officer's interview notes is understandable; the record includes a document entitled "Interpreter Declaration" that addresses the question. It is also not helpful to microscopically parse the Officer's choice of words. I note that despite the words chosen in conveying the denial of having received a poison pen call, the Officer also states that her concerns with the marriage were unrelated to any poison pen call. This is consistent with the absence of any reference to such a call in her notes or decision letter. Where the evidence conflicts, I prefer the Officer's version of events.

[24] However, even if I were to prefer Mr. Waked's version, I am satisfied the duty of fairness was met. Mr. Waked states that the Officer raised the call and gave him an opportunity to address it. Where the duty of fairness is at the lower end of the spectrum as it is in the visa application context (*Sapojnikov v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 964 at para 26; *Amiri v Canada (Citizenship and Immigration)*, 2019 FC 205 at para 31), this was sufficient to satisfy the duty.

[25] I am also unable to conclude that the alleged inadequacy of the interpretation establishes a breach of fairness. Mr. Waked provided the interpreter and did not raise any concerns with the interpretation at the time of or shortly after the interview. Rather, he signed a document stating that he “understood the nature and effect of the information interpreted.” The failure to raise concerns with the adequacy of interpretation at the first opportunity has been held to be a waiver of the right to object later (*Jovinda v Canada (Citizenship and Immigration)*, 2016 FC 1297 at para 31).

[26] Nor does the Officer’s failure to ask the applicant to provide proof of the source of funds in Ms. Khatib’s account constitute a breach of fairness. The Officer’s request, as reflected in her notes, did not discourage production of proof of the source of the funds. The burden to establish the facts and circumstances upon which an IRPA application is based rests with the applicant. An officer’s questions do not displace that burden. Neither Mr. Waked nor Ms. Katlib was prevented from producing documentation after the interview was complete.

[27] Mr. Waked has taken issue with the Officer having addressed this matter in her subsequent affidavit on the basis that it is an attempt to supplement the reasons. While I am not convinced that the Officer’s affidavit evidence on this point supplements her reasons, I have reached my conclusion on this issue without having considered the Officer’s affidavit evidence on this point.

[28] Finally, the fact that certain photos referred to by the Officer were not in the CTR does not constitute a breach of procedural fairness. In *Akram*, upon which Mr. Waked relies, the

transcript of a hearing before the Refugee Protection Division [RPD] made reference to a Personal Information Form and an affidavit, neither of which was in the CTR. Justice Yvan Roy found these missing documents were relevant and material. He also noted jurisprudence holding that a decision must be overturned where it is known that an applicant submitted a document that is not in the CTR and it is unclear whether the document was before the decision maker. He concluded that the absence of the documents from the CTR meant the RPD did not have all the relevant documentation before it, causing a breach of procedural fairness.

[29] *Akram* is distinguishable. In this case, it is clear that the photos in issue were before the Officer as she makes reference to them in her decision. The content of the photos as described by the Officer in her decision is not in dispute. The content of the photos was relevant but not determinative in the Officer's assessment of the application. In this context, Mr. Waked has not demonstrated any disadvantage or prejudice and therefore no breach of fairness.

B. *Was the Officer's finding that the marriage was not genuine unreasonable?*

[30] Mr. Waked argues the Officer failed to act with requisite care in assessing his relationship with Ms. Khatib. He submits the Officer unreasonably focused on the couple's financial arrangements and failed to adequately consider the development of their relationship, their knowledge of each other, and their cohabitation arrangements, all of which were consistent with a genuine relationship.

[31] I am not convinced that the Officer's decision is unreasonable. It is evident that the Officer placed significant weight on the couple's financial arrangements in assessing the

application. However, the Officer did not, in my view focus on the couple's financial arrangements to the exclusion of other factors relevant to the assessment of their relationship.

[32] The Officer accepted that the couple had knowledge of each other but noted that "a couple sharing the same residence for a period of time would become familiar with each other, their daily routines and activities." It is evident the Officer was not convinced on the specific facts before her that this factor was to be given significant weight in assessing the relationship.

[33] The Officer also considered the photos provided to evidence the couple's formal wedding and later celebration with family and friends. The Officer noted the photos of the ceremony appeared "very informal and impersonal." The Officer highlighted the inconsistency between Ms. Khatib's explanation for the simple ceremony depicted in the photos and Mr. Waked's description of Ms. Khatib's personality. The Officer also highlighted that the celebration photos consisted mostly of the couple and there were no photos "indicative of a celebration with family and friends." The Officer sought an explanation but found it not be satisfactory and in doing so set out why.

[34] Mr. Waked disagrees with the Officer's treatment of the evidence and the conclusions reached. However, this is not sufficient to render the decision unreasonable. The Officer's treatment of the evidence and ultimate conclusions are transparent, justified, and intelligible.

VI. Conclusion

[35] The application is dismissed. The parties have not identified a serious question for certification and none arises.

JUDGMENT IN IMM-3639-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3639-18

STYLE OF CAUSE: BAHAA WAKED v THE MINISTER OF CITIZENSHIP
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