

Federal Court



Cour fédérale

**Date: 20190729**

**Docket: IMM-488-19**

**Citation: 2019 FC 1017**

**Vancouver, British Columbia, July 29, 2019**

**PRESENT: Madam Justice St-Louis**

**BETWEEN:**

**KWAN YING WONG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Ms. Kwan Ying Wong, the Applicant, seeks judicial review of the decision rendered on January 4, 2019 by an immigration officer (Officer), refusing the permanent resident application she filed under the Spouse or common-law partner in Canada Class.

[2] For the reasons exposed below, Ms. Wong's Application will be granted.

## II. Context

[3] In July 2010, Ms. Wong, a Chinese citizen, and Mr. Walter Scott, a Canadian citizen, met, and on August 5, 2011, they married. On December 7, 2016, Ms. Wong submitted a third spousal application for permanent residence, and on September 8, 2017, Ms. Wong and Mr. Scott were interviewed in Vancouver, first separately, then together. Ms. Wong was assisted by a Cantonese interpreter during her individual interview. The Officer asked questions about their family members, about the couple's finances, about Ms. Wong's trips back to Hong Kong, and about their daily lives. As per the Officer's notes taken during the interview, the only question relating to the beginning of their relationship and their intention at that time related to Mr. Scott's family's reaction to their marriage (Certified Tribunal Record at 17–49). The Officer nonetheless concluded the interview by advising the couple that “it is looking like the primary purpose of this marriage is to facilitate [Ms. Wong's] immigration to Canada” (Certified Tribunal Record at 49).

[4] On January 4, 2019, the Officer refused Ms. Wong's application. The Officer determined that Ms. Wong had not shown that she met the requirement of paragraph 4(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], and that she was not a person described in Section 4 of the Regulations. Section 4 of the Regulations states that 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 (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or (b) is not genuine. Hence, as per the refusal letter, and despite not discussing this issue in her reasons, the Officer

determined, *inter alia*, that Ms. Wong entered the marriage primarily for the purpose of acquiring a status or privilege under the Act.

[5] On January 22, 2019, Ms. Wong applied for leave and judicial review against the Officer's decision.

### III. Position of the parties

[6] Ms. Wong argues that the Officer's decision is unreasonable because she had a fixed idea of how a marriage relationship should look like. She also argues that the Officer's reasons were unintelligible, arbitrary, and irrational, because (1) it is unclear why the Officer placed significance on some parts of the evidence and not on the ample evidence of consistency between Ms. Wong and Mr. Scott's responses; (2) the Officer contradicts herself when she acknowledges that they do not regularly socialize with friends and family and yet finds it unreasonable that Ms. Wong does not have a firm grasp of her husband's friends; (3) the Officer is unclear on how Mr. Scott's lack of frequent communication with Ms. Wong's daughter demonstrates a lack of mutual commitment to a shared life; (4) the Officer does not state what "real emotional dependence or interaction" is; (5) her manner of questioning lacked clarity and precision; and (6) she engaged in improper questioning.

[7] Ms. Wong adds that the Officer's decision is unintelligible, because although the Officer relies specifically on paragraph 4(1)(a) of the Regulations and advises the couple, at the end of the interview, that this provision seems to be the determining factor, she spent no time interviewing them about the motivation for the marriage, nor did she provide any analysis of paragraph 4(1)(a) in her reasons.

[8] Ms. Wong argues that she was treated unfairly, because (1) they were interviewed on September 8, 2017 and the decision was rendered 16 months later on January 4, 2019; (2) they received no substantial response to their inquiries regarding the status of their application; (3) they were not provided an opportunity to submit updated information; (4) the Officer raised her voice during questioning, pressured her, and failed to take breaks; (5) the Officer has a mechanistic approach to the case; and (6) the Officer was inexperienced and defaulted to follow standard practice.

[9] The Minister responds that there are two distinct tests under subsection 4(1) of the Regulations and that, on judicial review, the applicant must show that the officer failed to consider both prongs of the test to prove a reviewable error (*Onwubolu v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 19 at paras 13, 15 [*Onwubolu*]; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077 at paras 20, 29; *Sandhu v Canada (Citizenship and Immigration)*, 2014 FC 1061 at para 24).

[10] The Minister adds that the Officer's decision is reasonable and reflected her consideration and assessment of the totality of the evidence. The Minister remarks that a judicial review is not a line-by-line treasure hunt for errors and that Ms. Wong's arguments all relate to the weight that the Officer gave to certain evidence.

[11] The Minister also adds that the Officer's "decision was procedurally fair" (Respondent's Further Memorandum of Argument at para 36): the Officer did not make any representations about the timing of the decision following the interview; there was no onus on the Officer to make a decision by a certain time; and Ms. Wong has not shown how the delay resulted in any prejudice. The Minister adds that the Officer treated Ms. Wong fairly at the

interview as well: the Officer did not raise her voice; Ms. Wong did have a break and did not request any breaks (Affidavit of Parveen Sandhu sworn on May 23, 2019 at para 9); and the questions were not unexpected considering that Ms. Wong has been through similar interviews in the past.

#### IV. Standard of review

[12] For issues of procedural fairness, the Court must determine whether the procedure was fair having regard to all circumstances (*Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[13] The standard of review applicable to the question of whether a marriage was entered into for the primary purpose of immigration or of whether a marriage is genuine is the reasonableness standard (*Al Mousawmaii v Canada (Citizenship and Immigration)*, 2018 FC 1256 at para 12 [*Al Mousawmaii*]; *Chen v Canada (Citizenship and Immigration)*, 2018 FC 840 at para 8).

[14] When assessing reasonableness, the Court is to determine whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law and whether the decision-making process is justified, transparent and intelligible (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

#### V. Discussion

[15] The determinative issue in this application pertains to the reasonableness of the Officer's decision. As this settles the application, the Court needs not consider Ms. Wong's arguments on procedural fairness.

[16] Subsection 4(1) of the Regulations provides that 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 (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or (b) is not genuine.

[17] It is well-established that this test is disjunctive and includes a temporal distinction. Paragraph 4(1)(a) calls for an assessment of the spouses' intention at the time of the marriage, whereas paragraph 4(1)(b) refers to the authenticity of the marriage at the present time (*Al Mousawmaii* at para 25; *Ferraro v Canada (Citizenship and Immigration)*, 2018 FC 22 at para 13; *Onwubolu* at para 14).

[18] At the end of the interview, the Officer advised Ms. Wong and Mr. Scott that it seemed like the primary purpose of their marriage was to facilitate Ms. Wong's immigration to Canada, but she did not question the spouses about their initial intention during the interview, as shown by her contemporary interview notes.

[19] In her reasons for decision, the Officer referred only to aspects pertaining to the genuineness of the marriage and nowhere did she address the intention of the parties at the time of their marriage. She found, essentially, that (1) the significant discrepancies in the couple's responses led her to find that the marriage was not genuine and that raised concerns regarding the couple's overall credibility; (2) it was "unreasonable for a genuinely married couple to provide such divergent responses"; (3) the sponsor's lack of knowledge of Ms. Wong's finances did not speak to the *bona fides* of the relationship; and (4) the applicant and sponsor were not able to provide much information to show any real emotional dependence or interaction.

[20] In her refusal letter, the Officer stated that Ms. Wong has not shown that she meets the requirement of paragraph 4(1)(a) of the Regulations, hence, that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the Act.

[21] Although the Officer did not examine the parties' intention at the time of their marriage, she nonetheless clearly concluded that Ms. Wong had not met the requirement of paragraph 4(1)(a). This renders the decision is unintelligible and fails to meet the *Dunsmuir* standard of reasonableness.

**JUDGMENT in IMM-488-19**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision is overturned and the file is remitted back for a new determination by a different officer. No question is certified.

"Martine St-Louis"  
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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-488-19

**STYLE OF CAUSE:** KWAN YING WONG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JULY 25, 2019

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** JULY 29, 2019

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