Federal Court Cour fédérale

Date: 20230616

Docket: IMM-6879-21

Citation: 2023 FC 852

Ottawa, Ontario, June 16, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

TERRY RICARDO CHAMBERS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Terry Ricardo Chambers [Applicant] seeks judicial review of an Immigration, Refugees and Citizenship Canada [IRCC] officer's [Officer] September 25, 2021 decision [Decision] refusing his application for permanent residence under the Spouse or Common-Law Partner in Canada Class [Spousal Sponsorship Application].

[2] The application for judicial review is allowed.

II. Background

[3] The Applicant is a 35-year-old Jamaican citizen. The Applicant's sponsor and wife is a 60-year-old Canadian citizen. The couple met in 2015 when the Applicant came to Canada as a temporary foreign worker at his wife's farm. They formed a relationship during this time, ultimately marrying in 2019.

[4] On or around February 2020, the Applicant submitted his Spousal Sponsorship Application. On August 26, 2021, the Applicant received a procedural fairness letter [PFL] citing concerns as to whether the couple was in a *bona fide* relationship and cohabitated pursuant to paragraph 124(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*]. The Officer provided the Applicant seven days from the date of the letter to provide submissions.

[5] The Applicant was unable to open the PFL through his online portal until September 7, 2021, after which he immediately retained counsel. On September 8, 2021, the Applicant's counsel asked the Officer for a 30-day extension to make further submissions. That same day, the Applicant received a refusal letter. Counsel sent another email on September 9, 2021, referencing the prior extension request and the Applicant's difficulties opening the PFL. On September 14, 2021, the Officer provided the Applicant a seven-day extension to respond to the PFL. On September 15, 2021, counsel sent another request for a 30-day extension. The Officer

responded on September 16, 2021, confirming that the seven-day extension would stand because any relevant documents should be readily available.

[6] On September 20, 2021, counsel submitted the Applicant's response to the PFL. The response included a written narrative of the Applicant's relationship with his sponsor; identification; documentation establishing his wife's prior divorce; copies of the Applicant's work permit; the couple's marriage certificate; joint bank account statements; a shared hydro bill; a notice of assessment; the sponsor's life insurance policy naming the Applicant as sole beneficiary; photographs of the couple; and numerous letters in support of their relationship.

III. The Decision

[7] On September 25, 2021, the Officer refused the Applicant's application. The Officer was not satisfied that the Applicant met the requirements of the Spouse or Common-Law Partner in Canada Class.

[8] The Officer's Global Case Management [GCMS] notes, which form part of the reasons for the Decision, are reproduced in their entirety below:

> PFL sent to clients on August 26, 2021. Letter requested clients to submit documents to support a bona fide relationship. Clients were given seven days to email supporting documents (Sep 2, 2021). This case was reviewed on September 7, 2021. No submissions were received. Eligibility decision was rendered on this day. Refusal letter sent to clients in the afternoon of Sept 8, 2021. Counsel sent an email in the morning of Sept 8, 2021 requesting additional time (30 days) to submit documents. This email was not available to Officer before refusal letter was sent in the afternoon of the Sept 8, 2021. When the officer was made aware of this email request, case was reopened (Sept 14, 2021) granting clients an

> additional seven days to submit their supporting documents (Sept 21, 2021). Advising counsel that due to their long standing relationship these documents should be readily available to clients for submission to IRCC within the allotted time (7 days). Today Sept 25, 2021, I am reviewing these submissions. I note that majority of the documents submitted are the same documents submitted in the original application. New submissions received are as follows: 1) 2 photos dated Sept 2021 2) 2020 NOA for sponsor 3) Hydro One bill dated Sept 2021 in both clients names 4) BMO bank statement dated July 2020 in both clients names 5) TD bank statement dated Jul/Aug 2021 in both clients names 6) Another document from TD dated Sep 15, 2021. This document does not appear to be in a format to a typical TD bank statement/ notice/ letter. in both clients names 7) Letter of support from Elaine Chow (daughter of sponsor) dated Sep 2021 no ID to support identity 8) Letter of support from Lottie Chan dated Sep 2021. Copy if ID submitted. After close review of new and old documents I am noting that submissions do share a mutual address, which could support cohabitation. However, there was insufficient evidence surrendered to support a level of interdependency that comes with a relationship of this nature and of its length of six years. Despite the updated information my original concerns of the bona fides of this relationship have still not been alleviated. These clients have not submitted sufficient documentation to demonstrate this relationship is one that has been entered into with genuine intentions. Therefore, this officer is not satisfied that this relationship is not one that has been entered into to gain Immigration status.

IV. Issues and Standard of Review

[9] After considering the parties’ submissions, the issues are best characterized as:

1. Was the Decision procedurally fair?
2. Was the Decision reasonable?

[10] I agree with the parties that the standard of review for the merits of an administrative decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). A reasonableness review requires the Court to examine

outcome of the Decision and its underlying rational to assess "whether the decision, as a whole, bears the hallmarks of reasonableness—intelligibility, transparency, and justification—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 87, 99). A reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125). Where the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within the range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86). Conversely, a decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). The burden to demonstrate such unreasonableness rests with the party challenging the decision (*Vavilov* at para 100).

[11] The standard of review for procedural fairness is essentially correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at paras 49, 54 [*CP Railway*]). The Court has no margin of appreciation or deference on questions of procedural fairness. Rather, when evaluating whether there has been a breach of procedural fairness, a reviewing court must determine if the procedure followed by the decision-maker was fair, having regard to all the circumstances (*CP Railway* at para 54; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 2 SCR 817 at 837-41 [*Baker*]).

V. Analysis

A. *Was the Decision procedurally fair?*

(1) Applicant's Position

[12] The Officer's imposition of the seven-day deadline and the PFL's lack of specificity resulted in a breach of procedural fairness. The Applicant was not afforded a meaningful opportunity to respond.

[13] The more important a decision is to the life of an affected individual, the greater the level of procedural fairness required (*Angara v Canada (Citizenship and Immigration)*, 2021 FC 376 at para 32, citing *Baker*; *Gakar v Canada (Minister of Citizenship and Immigration),* [2000] FCJ No 661 at para 28, 189 FTR 306 [*Gakar*]). The Officer was required to provide adequate notice of their concerns and provide an opportunity to respond. The Applicant's multiple requests for an extension of time demonstrated a pressing need for additional time to draft fulsome submissions. IRCC's Operational Instructions and Guidelines also direct officers as to which documents may be submitted to establish a *bona fides* of a relationship, further ensuring applicants are afforded procedural fairness.

[14] The duty of fairness requires an officer to inform an applicant of the precise nature of all relevant concerns so that the applicant has a true opportunity to meaningfully respond and disabuse the officer of those concerns (*Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 22 [*Rukmangathan*]; *AB v Canada (Citizenship and Immigration)*, 2013 FC 134 at paras 52-55 [*AB*]; *Sapru v Canada (Citizenship and Immigration)*, 2011 FCA 35 at para 31 [*Sapru*]).

(2) Respondent's Position

[15] There was no breach of procedural fairness. The duty of fairness was at the low end of the spectrum (*Rezvani v Canada (Citizenship and Immigration)*, 2015 FC 951 at para 19). Here, the Applicant received a PFL and had the opportunity to provide submissions.

[16] The PFL references two concerns raised by the Officer: that the Applicant and his wife may not be cohabitating and that their relationship may not be genuine. The Officer was not required to provide the Applicant with a shopping list of satisfactory evidence.

[17] The Applicant's submission to the Officer states that there is "more than sufficient evidence to demonstrate that [the couple is] in a *bona fide* relationship", indicating that the Applicant was alive to the Officer's concerns. Fairness demanded no more of the Officer in the circumstances (*Oladihinde v Canada (Citizenship and Immigration)*, 2019 FC 1246 at para 12).

[18] The Applicant submitted a number of documents before this Court that post-date the requested extension of time, including personal letters of reference and photographs. It is unclear why the Applicant could not have submitted these materials sooner. Furthermore, had the 30-day extension been granted, these records would still not have been available to the Officer since they did not yet exist.

(3) Conclusion

[19] I agree with the Respondent that the Decision was procedurally fair. The Officer remedied the Applicant's inability to access the PFL by providing seven additional days to provide submissions. The Applicant did not suffer any prejudice as he received the same amount of time initially allotted to him.

[20] As for the alleged vagueness within the PFL, the Officer clearly states that, as it stood, the Applicant may not meet the selection criteria applicable to the Spouse or Common-Law Partner in Canada Class. The Officer cited concerns with the genuineness of the marriage and section 124(a) of the *Regulations*, thereby demonstrating that their concerns directly stemmed from the requirements of the legislative regime (*Rukmangathan* at para 23). Not only this, but the Officer's September 16, 2021 email clearly explained that the Applicant was to provide documents evidencing a "bona fide long standing relationship".

[21] After considering the record before the Officer, I agree with the Respondent that the Applicant was notified of the case to meet and was afforded the opportunity to respond. Even after considering the Applicant's response to the PFL, the Officer continued to have doubts about the genuineness of the marriage and whether the couple was cohabitating.

[22] The Applicant's pressing need for an extension of time argument similarly has no merit. The Applicant did not provide cogent reasons for why he needed an additional 30 days. Further, the argument that the Applicant "would have" adduced sufficient information with this additional

time holds little weight. There is also no rationale provided as to why the Applicant could not have obtained the additional documentation, submitted after the PFL deadline, any sooner. The onus rests on the Applicant to adduce sufficient evidence.

[23] I disagree with the Applicant's interpretation of the jurisprudence on these points. I would also add that granting an extension of time is a fact-specific inquiry. In *Gakar*, the Court determined that an officer must be understanding and flexible in deciding a request for an extension of time (at para 39). In that case, the officer gave no valid reason for refusing the extension requested, unlike in the case at hand (*Gakar* at para 32). Further, the university studies in question occurred over a decade prior to the decision. It was therefore conceivable that it would take the applicant more than 30 days to gather the information and proof requested by the officer (at para 29). Here, the Officer clearly indicated that documents provided in response to the PFL should be readily available if they were in a genuine marriage.

[24] Similarly, the case of *AB* is distinguishable on the facts. *AB* dealt with an officer's refusal of the Applicant's request for specification regarding national security inadmissibility concerns in a humanitarian and compassionate context. Here, the Officer clearly informed the Applicant of concerns with the genuineness of the Applicant's marriage and the couple's cohabitation. Requiring more of the Officer would be an overreach. The factual matrix in *Sapru* also differs from the present matter, particularly both in content and seriousness. *Sapru* dealt with a PFL that did not set out the medical officer's concerns such that the Applicant family could respond.

[25] As for the Guidelines and the documentation required to assist in establishing the *bona fides* of a relationship, I find this more compelling on the question of reasonableness. It is not particularly useful in determining the scope of procedural fairness owed to an applicant. Furthermore, as acknowledged by the Applicant, the Guidelines do not have the binding force of law, although they can aid in assessing the reasonableness of a decision (*Clarke v Canada (Citizenship and Immigration)*, 2017 FC 393 at para 21).

[26] For all of the above reasons, there was no breach of procedural fairness.

B. *Was the Decision reasonable?*

(1) Applicant's Position

[27] It was unreasonable for the Officer to find the Applicant's response insufficient given the issues with the PFL. The Applicant provided evidence of cohabitation, shared utilities, and joint financial statements. The Applicant and sponsor are also legally married under Canadian law.

[28] Where additional information is requested by an officer in a PFL, the officer is obligated to assess the responding information (*Singh v Canada (Minister of Citizenship and Immigration)*, 2021 FC 828 at para 19). An officer must also consider the totality of the evidence before them (*Koo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 931 at para 23). The Officer was required to provide intelligible reasons as to why the Applicant failed to disabuse the Officer of their concerns.

(2) Respondent's Position

[29] Many of the Applicant's arguments on this point relate to evidence they would have provided had they received more time. This does not affect the reasonableness of the Decision.

[30] The PFL raised concerns regarding cohabitation and the Decision explicitly noted that the new material offered additional evidence of cohabitation. The Officer reached their conclusion not because of a lack of legal marriage or cohabitation. Rather, the Officer explained that the new evidence was recent and did "not speak to the *bona fides* of a six-year relationship". Indeed, much of the Applicant's evidence dates to the time of their spousal application, with little preceding the date of marriage in 2019. Therefore, the Officer reasonably found that the Applicant failed to establish the genuineness of the relationship.

(3) Conclusion

[31] Notwithstanding the lack of detailed submissions from the parties on this issue, I nevertheless find the Decision unreasonable. The Officer failed to consider the totality of the evidence, resulting in an unintelligible Decision.

[32] The Applicant submitted a Hydro One bill in both his and his spouse's names, two bank statements in both names, identification demonstrating a mutual address, and letters of support, all of which indicate that the Applicant was cohabitating with his wife. The Officer even notes, "submissions do share a mutual address, which could support cohabitation." However, the Officer then determines that there was "insufficient evidence" to support a "level of

interdependency that comes with a relationship of this nature and of its length of six years." The Applicant provided evidence dating back to the date of their marriage. The Officer provides no indicia as to why this evidence was insufficient, as well as why the *bona fides* of their relationship was questioned. Put simply, one is left wondering why or how the Officer arrived at their conclusion.

[33] In undertaking a reasonableness review, "a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is "not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be justified, by way of those reasons" (*Vavilov* at para 86, emphasis in original).

[34] I agree with the Applicant that the Officer failed to consider the totality of the evidence and ultimately produced reasons that are not justified.

VI. Conclusion

[35] The Applicant's right to procedural fairness was not breached. However, the Decision was unreasonable. The application for judicial review is allowed.

[36] The parties have not proposed any question for certification and I agree that none arises.

JUDGMENT in IMM-6879-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. There is no question for certification.
3. There is no order for costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6879-21
STYLE OF CAUSE:	TERRY RICARDO CHAMBERS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	DECEMBER 14, 2022
JUDGMENT AND REASONS:	FAVEL J.
DATED:	JUNE 16, 2023

APPEARANCES:

Sonia Akilov Matkowsky	FOR THE APPLICANT
Brendan Stock	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matkowsky Immigration Law Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT