

Federal Court



Cour fédérale

Date: 20230721

Docket: IMM-5633-22

Citation: 2023 FC 1005

Ottawa, Ontario, July 21, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

JOSEPH ONYIBOR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an Application for judicial review of the decision of an Immigration, Refugees and Citizenship Canada officer [Officer], dated June 8, 2022 [Decision], denying the Applicant's permanent residence application under the Spouse or Common-Law Partner in Canada class. The Officer was not satisfied that the Applicant was in a genuine relationship. For the reasons that follow, this judicial review is granted as the Officer's Decision is not reasonable.

I. Background

[2] The Applicant is a 58-year-old citizen of Nigeria. His wife (sponsor) is a 63-year-old Canadian. The Applicant arrived in Canada on a temporary resident visa in March 2020. He met the sponsor shortly after arriving in Canada and they married in April 2021. A spousal sponsorship application was made in July 2021.

[3] The couple were interviewed separately by the Officer on May 11, 2022.

A. *Decision Under Review*

[4] The Officer was not satisfied that the marriage was genuine within the meaning of subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[5] In the Global Case Management System notes, the Officer notes inconsistencies between the Applicant's answers and his sponsor's answers during their interviews. The inconsistencies included the nicknames the couple used for each other, if they travelled to the interview together, and how, when, and where they met. The Officer also concluded that their answers suggested the couple were not living together.

II. Issue and Standard of Review

[6] The Applicant argues that the Decision was reached in a manner that was not procedurally fair and is unreasonable. As the reasonableness issue is dispositive of the judicial review, I decline to address the procedural fairness issues.

[7] The standard of review for the Decision itself is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

III. Analysis

[8] The Applicant argues the Officer's conclusion that there were a sufficient number of inconsistent answers to justify an overall finding that the marriage was not genuine is not reasonable. The Applicant submits that when the interview questions and answers are considered in the context they were given, there are no true inconsistencies. Further, the Applicant argues any discrepancies are of a minute nature and not sufficient to support a finding that the marriage was not genuine.

[9] One inconsistency identified by the Officer is the location of the Costco where the couple first met. Both the Applicant and the sponsor answered that they met at a Costco in Vaughan. However, the sponsor referenced a cross street that was not the correct address for the Costco in Vaughan. The Officer determined this incorrect street address was a contradiction from the sponsorship paperwork. In my view, an incorrect street address was an inconsequential discrepancy as the parties were both consistent that they meet at the Costco in Vaughan.

[10] Another inconsistency relied upon by the Officer was the couple's answers to the question if they had nicknames for each other. The sponsor stated the couple used short forms of their first names, Joe and Ophi, whereas the Applicant stated they use terms like 'darling' and 'baby'. Neither party indicated a specific term or name that was used. In my view, the Officer's question was vague, thus it was not reasonable for the Officer to classify their answers as inconsistent.

[11] The Officer also questioned if the parties lived together as the Officer found the sponsor did not name her husband when asked who she lived with. This response was given following the sponsor's previous answer that she and the Applicant were living together. The Officer's follow up question "[w]ho do you live with?" could have been interpreted by the sponsor as 'who do you and your husband live with', given she had just stated they live together. Her answer to the next question, "[h]ow many people total?", is also consistent with her husband living with her: she answered six people and named her daughter and her husband, a grandson, and her son. The other two people were presumably her and her husband. In my view, it is not reasonable for the Officer to find an inconsistency on this factor based upon the sequence of the questions.

[12] The Officer also asked the Applicant a question about when his "wife" first arrived in Canada. The Applicant responded by asking if the Officer meant his first wife or his current wife. The Officer concluded that someone in a genuine relationship would not be confused about which wife was being referred to when asked about his spouse.

[13] However, the Applicant asserts that the confusion about which wife the Officer was referring to arose directly from the context in which the questions were asked. Specifically, the previous question was about when his son first arrived in Canada. The next question was when his “wife” first arrived in Canada. The Applicant says that he understood the Officer to be asking a follow-up question about his son’s arrival in Canada, and in fact, his son was accompanied by his first wife when he arrived in Canada. In my view, the fact that he asked for clarification on the Officer’s question was not unreasonable or inconsistent when the order of the questions posed by the Officer is considered.

[14] Further, although the Officer relies upon inconsistent answers on how the couple travelled to the interview, the record discloses no such inconsistency in their answers. Rather, the record suggests that it was the Officer who confused their answers.

[15] While I do agree that the Applicant provided unclear answers to questions on his sponsor’s hours of work and whether she had a car at some point in their relationship, in my view these answers are not sufficient to support the Officer’s conclusion. I say this as the Officer made a “cumulative” finding of inconsistent answers. In my view these unclear answers would not be sufficient to support the Officer’s overall conclusion that the marriage was not genuine.

[16] I acknowledge that the Officer was not required to seek clarification or documentation from the Applicant to clarify answers; however the Officer was obligated to reasonably consider the answers provided by the couple in relation to the questions the Officer posed. In this regard, the context of the questions posed by the Officer is relevant. Having reviewed the transcripts

which detail the questions and answers, the conclusions reached by the Officer are not reasonable when considered against the answers provided by the Applicant and his spouse.

IV. Conclusion

[17] The Officer's Decision was based upon a finding that there were a series of inconsistent responses given by the Applicant and his sponsor. As noted above, a number of the "inconsistencies" identified by the Officer are not inconsistencies at all. Furthermore, any discrepancies in the answers were microscopic or did not go to the issue of whether the relationship was *bona fide*. In my view, the Officer here engaged in an overzealous assessment of the alleged discrepancies. Finally, as it is not clear which, if any, of these inconsistencies were determinative for the Officer, the Decision as a whole is unreasonable.

JUDGMENT IN IMM-5633-22

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is granted, the decision is set aside, and the matter is remitted for redetermination by a different Officer; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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