Federal Court  Cour fédérale

Date: 20230803

Docket: IMM-3844-22

Citation: 2023 FC 1067

Montréal, Quebec, August 3, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

DIONNE MAXINE JOSEPH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Dionne Maxine Joseph, is a citizen of Jamaica. Ms. Joseph is seeking judicial review of a decision rendered on April 7, 2022 [Decision], whereby a visa officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] refused Ms. Joseph's application for permanent residence [Application] under the spouse or common-law partner in Canada class [Spousal Class]. The Officer was not satisfied that the relationship between Ms.

Joseph and her spouse was genuine and not entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Joseph is asking the Court to set aside the Decision. She submits that the Officer's assessment is unreasonable, as it allegedly ignored relevant evidence and failed to adequately justify its underlying reasoning.

[3] For the reasons that follow, I will dismiss this application. Having considered the evidence before the Officer, the reasons for the Decision, and the applicable law, I can find no basis for overturning the Decision. The Decision relies on a reasonable analysis of the evidence submitted by Ms. Joseph.

II. Background

A. *The factual context*

[4] Ms. Joseph came to Canada in December 2015 as a student.

[5] In April 2019, Ms. Joseph met Mr. Huntley Oneil Haughton. She became involved romantically with him in May 2019.

[6] In December 2019, Mr. Haughton proposed to Ms. Joseph. They got married in May 2020.

[7] In September 2020, Ms. Joseph submitted an application for permanent residence under the Spousal Class, with her husband as her sponsor.

[8] On March 23, 2022, IRCC sent Ms. Joseph a procedural fairness letter asking her to provide additional documents and information to support her application. Ms. Joseph and her sponsoring husband provided the required documents.

B. *The Decision*

[9] Based on the information on file and Ms. Joseph's failure to provide sufficient information, the Officer was not satisfied that she and her sponsor were in a genuine relationship. In the Decision, the Officer first referred to bank account statements under the name of Ms. Joseph and her sponsor, but indicated that aside from several transfers of funds out of the account and large deposits, nothing in those statements could demonstrate "joint expenses" such as significant expenditures for common necessities. Therefore, the Officer determined that Ms. Joseph failed to establish daily financial interdependency that normally occurs during a marriage.

[10] Further, the Officer noted a series of documents that only contained either Ms. Joseph's name or that of her sponsor, but were not addressed to both. Among others, the Officer identified the tenancy agreement and 407 ETR bill bearing the name of Ms. Joseph, the electricity, property tax, and Rogers Internet bills under the name of her sponsor, as well as separate auto insurance for each of Ms. Joseph and her sponsor.

[11] Finally, the Officer considered Ms. Joseph's phone bill with daily call history, but determined that, in the absence of phone bills and communication modes from the sponsor, this was not sufficient to establish communication activity with her sponsor and a genuine relationship.

[12] Overall, the Officer declared that the evidence adduced by Ms. Joseph was not sufficient to demonstrate a *bona fide* relationship. Considering the circumstances of her meeting with her husband and the length of time Ms. Joseph has spent in Canada, the Officer concluded that Ms. Joseph had not met her onus to make reliable and compelling submissions and to provide sufficient evidence about the genuineness of her marriage.

C. *The standard of review*

[13] Ms. Joseph and the Minister of Citizenship and Immigration [Minister] submit that the standard of reasonableness applies to the judicial review of the Decision. I agree (*Boyacioglu v Canada (Citizenship and Immigration)*, 2021 FC 1356 [*Boyacioglu*] at para 23).

[14] Reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review of the merits of an administrative decision (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the outcome (*Vavilov* at paras 83, 87). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must therefore consider whether the "decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[15] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with "respectful attention," and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

[16] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for a reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100). When the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

III. Analysis

[17] The test for genuineness of marriage under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 requires an assessment of whether the marriage was entered into primarily for the purpose of acquiring any status or privilege under the IRPA, as well as whether the marriage is genuine (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 [*Basanti*] at para 36). The test is disjunctive, meaning that "either circumstance suffices to disqualify an applicant" (*Boyacioglu* at para 27). In other words, an applicant must demonstrate both that the marriage was not entered into primarily for an immigration purpose

and that the relationship is genuine (*Ferraro v Canada (Citizenship and Immigration)*, 2018 FC 22 at para 12).

[18] Ms. Joseph submits that the Officer ignored important evidence and failed to explain why the evidence was not sufficient to support her application. According to Ms. Joseph, the Officer ignored several relevant factors that prove the genuineness of her relationship with her sponsor, and focused only on financial interdependency. Ms. Joseph contends that she submitted recent photographs, supporting letters, and other bills that the Officer failed to take into account or mention. Further, she submits that she and her sponsor share the same home address on tax and banking documentation, on cellular phone accounts, on health cards and driver licenses, and on automobile insurance documentation.

[19] None of these arguments is convincing.

[20] Ms. Joseph relies on *Ma v Canada (Citizenship and Immigration)*, 2016 FC 1283 [*Ma*], where the Court found that the visa officer in that case ignored evidence which corroborated the genuineness of the relationship. However, in *Ma*, the visa officer did not refer to evidence showing that the applicant and their spouse's joint bank account appeared to be regularly used, or to documentation on which they both had the same home address. This is not the situation here.

[21] While similar evidence was provided by Ms. Joseph and her sponsor, the Officer did acknowledge such evidence, whereas in *Ma*, it was completely ignored (*Ma* at para 11). In the present case, the Officer relied on the documents, but simply drew a different interpretation from them. Rather than concluding that multiple transactions in the joint bank account corroborated the genuineness of the relationship, as Justice Gleeson suggested in *Ma*, the Officer emphasized

the fact that the joint bank account statements, unaccompanied by supporting documents, did not demonstrate that the couple had joint expenses. Similarly, instead of concluding that Ms. Joseph and her sponsor were cohabiting because they had the same address on multiple bills, the Officer found that none of the documents was addressed to both individuals, which was insufficient to establish a genuine relationship. It is useful to reproduce the following extract from the Decision:

> The applicant submitted a Scotiabank statement bearing the applicant and sponsors name. The statements beginning from the month of December 2021 to March 2022 show several transfers of funds out from the account and large sum deposits. This document does not provide adequate proof unaccompanied by supporting material to establish 'Joint Expenses.' … The applicant submitted a tenancy agreement bearing the names Nicolette Wright and Dionne Joseph; Hydro Bill bearing the sponsors name; Property Tax bill bearing the sponsors name; 407 ETR bill bearing the applicants name; separate auto insurance for the applicant and sponsor; Rogers Internet bill bearing the sponsors name. These documents are not evidence of a marriage nor a relationship. The documents provided are insufficient to establish the presence of a *bona fide* relationship.

[22] The fact that Ms. Joseph suggests a different interpretation, or wishes that the Officer had adopted an approach similar to Justice Gleeson's in *Ma*, does not suffice to demonstrate that the Officer's interpretation of the evidence is unreasonable. The question before the Court is not whether another result or another interpretation could have been possible. The question is whether the conclusion drawn by the Officer is itself reasonable and falls within the range of possible acceptable outcomes in the circumstances. The fact that there might be other plausible interpretations and that one of them might support a more favourable outcome to Ms. Joseph does not imply that the one determined by the Officer was unreasonable. In fact, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution. Evidence can be reasonably assessed in different ways. This is the

crux of judicial review under the standard of reasonableness. As the Supreme Court of Canada emphasized in *Vavilov*, "[i]t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings" (*Vavilov* at para 125).

[23] Further, the lack of reference to the couple's pictures or family statements submitted by Ms. Joseph is not fatal to the reasonableness of the Decision. There is a strong presumption that a decision maker has weighed and considered all the evidence, unless the contrary is established (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). Moreover, failure to mention a particular piece of evidence does not mean it has been ignored or discounted (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), and a decision maker is not required to refer to all of the evidence that supports his or her conclusions. It is only when the decision maker is silent on evidence that clearly supports a contrary conclusion that the Court may intervene and infer that the decision maker overlooked the contradictory evidence in making his or her finding of fact (*Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207 [*Nguyen*] at para 23, citing *Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at paras 16–17). However, *Cepeda-Gutierrez* does not support the proposition that the mere failure to refer to important evidence that runs contrary to the decision maker's conclusion automatically renders the decision unreasonable and causes it to be set aside. On the contrary, *Cepeda-Gutierrez* states that only when the evidence omitted is critical and squarely contradicts the decision maker's conclusion can the reviewing court infer that the

decision maker failed to take into account the evidence before him or her (*Basanti* at para 24). This is not the case here, and Ms. Joseph has not referred the Court to any such evidence in the record.

[24] In fact, the structure of the Decision indicates that the Officer effectively mentioned the factors that were of concerns. In the Decision, the Officer wrote: "I am not satisfied that the applicant and her sponsor are in a genuine relationship. The decision was rendered based on — but not necessarily limited to — the following areas of concerns." Those concerns included the lack of evidence showing that Ms. Joseph and her sponsor cohabitated or depended on each other's financial contribution for common necessities of life. Accordingly, I am not convinced that Ms. Joseph has rebutted the presumption that the Officer considered all of the evidence. The lack of reference to the photographs or to the family statements merely reflects the fact that the Officer did not have concerns with them. The Officer instead determined that the factors singled out in the reasons outweighed the evidence that, in Ms. Joseph's view, corroborated the genuineness of her marriage.

[25] I am also not convinced that the evidence Ms. Joseph points to is squarely contradicting the Officer's findings in the Decision (*Cepeda-Gutierrez* at paras 16–17). Ms. Joseph did not demonstrate the relevance of the allegedly "ignored" evidence. It should be recalled that the Court has recognized the challenge of assessing the genuineness of marriages:

> As recently indicated by the Court, "assessing the genuineness of a marriage is a challenging task at the best of times", in a context where people "who are intent on committing a form of deceit to gain the highly valuable status of Canadian permanent residence will conduct themselves to make the relationship look outwardly genuine, when it is not".

> (*Nguyen* at para 21, citing *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 at para 23)

[26] In this context, the importance of the Court's deference to the Officer's findings is even greater (*Boyacioglu* at para 32). I can appreciate that Ms. Joseph may disagree with the Officer's unfavourable assessment and challenge the weight given to the various factors at issue. However, it is not for the Court to re-weigh the evidence. On judicial review, the Court is not permitted to substitute its own assessment of the evidence for that of the administrative decision maker. Deference to an administrative decision maker includes deference to his or her findings and assessment of the evidence. The reviewing court must in fact refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). I would add that IRCC officers have considerable expertise in hearing and deciding matters such as the genuineness of marriages, which therefore requires this Court to accord them a high degree of deference. In this case, the arguments raised by Ms. Joseph are more an expression of her disagreement with the analysis of the evidence and the weighing of the various factors by the Officer in the exercise of their discretion and expertise.

[27] The purpose of review on a reasonableness standard is to understand the basis on which the decision is made, and to identify whether there are sufficiently central or significant deficiencies or whether the decision reveals an unreasonable analysis (*Vavilov* at paras 96–97, 101). The party challenging the decision must satisfy the reviewing court that "any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Ms. Joseph did not convince me that the lack of reference to the photographs or to the family statements is such a shortcoming. In this case, I am satisfied that the

Officer's reasoning can be followed without a decisive flaw in rationality or logic and that the reasons were analyzed in such a way that could reasonably lead the Officer, having regard to the evidence and the relevant legal and factual constraints, to conclude as they did (*Vavilov* at para 102). There is no serious deficiency in the Decision that would taint the analysis and that would be likely to undermine the requirements of justification, intelligibility, and transparency.

[28] Finally, contrary to what Ms. Joseph argues, the Officer did not rely solely on "minutiae and marginalities" because of the Decision's focus on financial interdependence.

[29] Financial interdependence is a reasonable factor for a visa officer to consider upon applications for permanent residence under the Spousal Class, as the Court established in *Le v Canada (Citizenship and Immigration)*, 2016 FC 330 at paragraph 6 and in *Attaallah v Canada (Citizenship and Immigration)*, 2014 FC 522 at paragraphs 31–32. The Officer was tasked with reviewing the evidence and assessing whether it was sufficient to support the genuineness of Ms. Joseph's marriage and whether it was entered into primarily for the purpose of acquiring any status or privilege under the IRPA (*Boyacioglu* at para 29). Ms. Joseph did not explain how the Officer would have unduly done so with "minutiae and marginalities" solely because they examined the content of the evidence. The Officer relied not only on the limited evidence of financial interdependence, but also on other documents adduced by Ms. Joseph, and repeatedly found the evidence to be insufficient.

[30] It was Ms. Joseph's burden to satisfy the Officer that her relationship with her sponsor is genuine and not entered into primarily for the purpose of acquiring any status or privilege under the IRPA (*Huang v Canada (Citizenship and Immigration)*, 2020 FC 241 [*Huang*] at para 28, citing *Mbala v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1057 at para 22). In

my view, in the circumstances of this case, it was open to the Officer to determine that Ms. Joseph had failed to do so. The Officer's reasons for refusing the Application are clear. It was the lack of evidence supporting co-habitation and mutual interdependency that led to a finding of a non-genuine relationship (*Huang* at para 26). The reasons supporting the Decision amply justify the outcome and allow the Court to follow the Officer's reasoning. Ms. Joseph was unable to demonstrate that the reasoning itself lacks logic or coherence, nor that the reasoning does not "add up" (*Vavilov* at para 104).

IV. Conclusion

[31] For the reasons set forth above, this application for judicial review is dismissed. Although Ms. Joseph would have preferred a different decision, I am satisfied that the Officer reasonably considered the evidence she presented and adequately explained why such evidence was insufficient, on a balance of probabilities, to demonstrate that the primary purpose of Ms. Joseph's marriage was not to acquire a status or privilege under the IRPA, or that her marriage is genuine.

[32] There are no questions of general importance to be certified.

JUDGMENT in IMM-3844-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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