Federal Court  Cour fédérale

Date: 20240304

Docket: IMM-13555-22

Citation: 2024 FC 356

Ottawa, Ontario, March 4, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

TONIA YOLAND MARSHALL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by an immigration officer (the "Officer"), denying the Applicant's application for permanent residence under the *Spouse or Common-law Partner in Canada* class.

II. Background

[2] The Applicant is a 46-year-old Jamaican citizen.

[3] The Applicant alleges that she is in a common-law partnership with Donovan Washington Campbell (the "Sponsor"), who is a Canadian citizen. She further alleges that she met the Sponsor in July 2018, and that the two of them have been cohabiting in the city of Brampton since September 2020. The Applicant applied for permanent residency in February 2022 under the *Spouse or Common-law Partner in Canada* class.

[4] At the time of her sponsored application, the Applicant was residing in Canada on a temporary resident permit for victims of family violence (the "TRP"). She had also applied for permanent residence on humanitarian and compassionate grounds (the "H&C application"). The H&C application was denied, and it appears that the Applicant challenged the outcome. Though relevant, the H&C application is not the focus of this review.

[5] In November 2022, the Officer requested additional information from the Applicant in relation to her sponsored application. The request was for a number of documents, including a copy of the Applicant's and the Sponsor's tax returns, rental agreements, phone bills, and financial statements. The Officer also sought clarification on the status of the Applicant's H&C "appeal", as well as previous applications made by the Sponsor in relation to former spouses.

III. The Decision

[6] The Officer denied the Applicant's application in a decision letter dated December 2022. The Decision states that the Officer was not satisfied that the Applicant is "cohabiting with [the Sponsor] in Canada on the basis of common-law [*sic*] partner relationship".

[7] The Officer observed in their notes that (1) the Applicant's income tax returns for 2020 and 2021 state that she resides in Markham, while the Sponsor's income tax returns for those years state the he resides in Brampton; (2) appointment records at a local hospital from late 2021 and early 2022 show that the Applicant's address is in Markham, not Brampton; (3) the Applicant's joint bank account with the Sponsor was opened in October 2021, only a few months before she applied for permanent residence in February 2022; (4) there was no evidence of financial commitment, such as retirement savings, life insurance, or other employer-provided benefits naming either party as the other's beneficiary; and (5) there was no tenancy agreement or home ownership document attesting to cohabitation.

[8] In addition, the Officer also observed that the Sponsor did not provide an update on two previous applications he had sponsored and that he did not provide a phone bill as requested, nor did the Applicant provide updates regarding her H&C matter.

[9] The Applicant claimed the Decision was procedurally unfair. She requested that the Officer reconsider the Decision and hold an oral interview, but did not receive a response regarding her request.

[10] On judicial review, the Applicant argues that the Decision was procedurally unfair and substantively unreasonable.

IV. Issues

[11] Did the Officer breach their duty of procedural fairness?

[12] Was the Officer's finding that the Applicant and the Sponsor were not cohabiting unreasonable?

V. Analysis

[13] The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

A. *Procedural Fairness*

[14] The Applicant argues that the Decision engages serious interests that require a high degree of procedural fairness. She claims that the Officer made an adverse credibility finding in relation to her application, and that such a finding imposed an obligation on the Officer to provide her with

a procedural fairness letter that notifies her of any concerns and allows her to respond to those concerns, and to hold an oral interview.

[15] The Officer did not make an adverse credibility finding. The onus was on the Applicant to satisfy the Officer that, among other things, she and the Sponsor cohabited since September 2020, as claimed in her application. The Officer was not satisfied that there was sufficient objective documentary evidence to support this claim. The Officer examined the Applicant's and the Sponsor's tax returns, their tenancy agreements, and their appointment records and noted that the Applicant and the Sponsor provided different residential addresses in each of those documents. The Officer also noted the Applicant's joint bank account with the Sponsor and observed that it was opened only a few months prior to the permanent residence application.

[16] The Officer did not breach the Applicant's right to procedural fairness.

B. *Reasonableness of the Decision*

[17] The Applicant also argues that the Officer's application of the law and their apprehension of the evidence was unreasonable. The Applicant cites the following issues in the substance of the Decision:

A. the Officer referred to the Applicant's challenge of the negative outcome on her H&C application as an "appeal", when it was in fact a judicial review;

B. the Officer made no mention of the Applicant's TRP and the fact that it was issued in relation to family violence;

C. the Officer requested clarification from the Sponsor regarding two prior sponsorship applications he made on behalf of former spouses, despite the fact that the latest of those applications was filed in 1982; and

D. the Officer wrongly observed that the Applicant's joint bank account with the Sponsor was opened in October 2021, when in fact it was opened in late September 2021.

[18] I do not agree with the Applicant that the above issues amount to a reviewable error. The fact that the Applicant's challenge of the negative outcome on her H&C application was a judicial review and not an appeal has no bearing on the Officer's reasoning. The same is true of the Applicant's TRP and the reasons for which it was issued. As for the Sponsor's former sponsorship applications, the Officer simply noted that the Sponsor provided no clarification in that regard, which is not disputed. Finally, with respect to the Applicant's joint bank account with the Sponsor, the account was opened on September 29, 2021, only a handful of days prior to October 2021. Ultimately, none of the above issues affect the substance of the Decision or the reasonableness of the Officer's analysis.

[19] The Applicant further argues that the Officer failed to consider a school record that showed that the Applicant's child attended a school located in Brampton, which is where the Sponsor lives and the Applicant alleges to have moved in September 2020.

[20] The school record relates to evidence dated November 1, 2021 – well after the time in which the Applicant alleges she began cohabiting the Sponsor, but provides some evidence to suggest that she may have resided in Brampton, where the Sponsor lives.

[21] It is well established that, where a decision maker fails to acknowledge important evidence, the Court may infer that the decision maker failed to regard the evidence reasonably – the more important the evidence, the stronger the inference (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 (CA) at para 17). In my view, the Applicant's child's school record is an important piece of evidence that should have been considered as an important factor in the Officer's decision. While such evidence may not be determinative of the Applicant's sponsorship application, it was sufficiently important to merit acknowledgment by the Officer.

[22] Since the Officer failed to acknowledge the school record, and because the school record is an important piece of evidence, the Court infers from the Officer's lack of acknowledgment that they misapprehended the evidence. When considering the evidence as a whole, there is a lack of transparency and justification in the Decision. It is therefore unreasonable.

VI. Conclusion

[23] The application is allowed and the matter is remitted for re-determination by a different officer.

JUDGMENT in IMM-13555-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is remitted for re-determination by a different officer.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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