Date: 20061012

Docket: IMM-1880-06

Citation: 2006 FC 1213

Ottawa, Ontario, October 12, 2006

Present: The Honourable Mr. Justice Harrington

BETWEEN:

YANNICK WANDJA DJEUKOUA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Yannick Wandja Djeukoua, a native of Yaoundé, Cameroon, found refuge in Canada four years ago because she feared police beatings which threatened her safety. After her arrival, she took the legal steps necessary to claim refugee status in the country. These steps proved to be unsuccessful. The Immigration and Refugee Board (IRB) decided to dismiss the application in that case and after that decision was submitted for judicial review, this Court dismissed the application for leave and for judicial review in early 2003.

[2] While the applicant waited for the IRB's response regarding whether she enjoyed true refugee status, she was fortunate to meet Davidson Achille, which led to a marriage in April 2003.

[3] At that time, Ms. Wandja Djeukoua still did not have legal status in the country and for that reason on October 8, 2003, she applied to Citizenship and Immigration Canada for a visa exemption on humanitarian and compassionate grounds. This application was intended to exclude the foreign national applicant from the general rule set out in subsection 11(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), to the effect that new arrivals to Canada must apply for a visa before entering the country. At the same time, her husband, a Canadian citizen, filed a sponsorship undertaking on October 16, 2003, on the advice of their counsel at the time, a member in good standing of the Barreau du Québec, now disbarred from the Roll of the Order. Both applications were dismissed last January.

[4] This is an application for judicial review of the decision on the application for permanent residence for humanitarian and compassionate reasons filed by Ms. Wandja Djeukoua. In this case, given the public policy which came into effect on February 18, 2005, regarding spouses and common-law partners in permanent residence matters and given the date Ms. Wandja Djeukoua's application was filed and assessed, it is important to point out that the impugned decision was automatically subject to a second assessment by the immigration officer. In short, the applicant applied before the announcement on February 18, 2005, and the application was not assessed until early 2006.

[5] It is important to point out that the new public policy permits spouses who are in Canada to apply for permanent residence in the spouse and common-law partner class from inside Canada, regardless of their immigration status. In fact, this policy is another exception to the rule generally applied in the country, set out in subsection 11(1) of the IRPA, to the effect that a Canadian visa application must be completed by the foreign national outside Canada before entering the country. Note that such an application by a new arrival is only possible in situations where a sponsorship application has been or will be filed for that person with Citizenship and Immigration Canada. As is the case in this matter.

[6] With the objective of encouraging the reunion of families by facilitating the immigration process for spouses and common-law partners living in Canada, the policy is consistent with the values promoted by Canada in immigration matters. Before the new policy came into effect, foreign nationals filing permanent residence applications in the class of spouse or common-law partner in the country first had to have a status recognized by the Canadian authorities. Today, there is no such obligation. However: “In order to apply from within Canada, you must be in a genuine relationship with a Canadian citizen or a permanent resident”, *Policy Change for Spouses and Common-law Partners applying for Permanent Residence from within Canada*, Citizenship and Immigration Canada.

[7] The application that was the subject of the impugned decision is based on two exemption schemes. The first is based on the public policy regarding spouses and common-law partners, while the second is based on the wording of subsection 25(1) of the IRPA.

[8] In this case, before it was possible for the immigration officer to decide on the outcome of Ms. Wandja Djeukoua's permanent residence application, it was imperative that the officer assess the evidence in the record in light of the issue of the genuineness of the marriage and also the issue of humanitarian and compassionate reasons. As it appears in the record, the officer performed this duty. Accordingly, in this matter our Court is considering both aspects assessed by the immigration officer.

[9] In this case, the officer dismissed Ms. Wandja Djeukoua's application in two steps. First, she determined that the applicant's marriage with Mr. Achille was one of convenience, and that ultimately it was simply a means for the applicant to acquire [TRANSLATION] "any status or privilege under the Act" as stated under section 4 of the *Immigration and Refugee Regulations* SOR/2002-227. Second, once the officer had considered the evidence supporting Ms. Wandja Djeukoua's humanitarian and compassionate reasons relating to her personal situation in Canada and in Cameroon, she again dismissed the application.

STANDARD OF REVIEW

[10] In this proceeding, the standard of review is not disputed. As it involves the discretionary decision of an immigration officer for humanitarian and compassionate reasons, the parties agreed to follow the directives drawn from *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, and to therefore accept the standard of reasonableness *simpliciter*.

[11] This Court must now determine whether the reasons supporting the impugned decision can stand up to a somewhat probing examination. In other words, for an immigration officer's decision

to be deemed unreasonable, Mr. Justice Iacobucci writes the following at paragraph 56 of *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748:

> An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it. The defect, if there is one, could presumably be in the evidentiary foundation itself or in the logical process by which conclusions are sought to be drawn from it. An example of the former kind of defect would be an assumption that had no basis in the evidence, or that was contrary to the overwhelming weight of the evidence. An example of the latter kind of defect would be a contradiction in the premises or an invalid inference.

[12] Further, considering the parties' submissions, it must be taken as a fact that the appropriate standard of review for the issue of the genuineness of the marriage is that of reasonableness *simpliciter*. Indeed, on this point, this very Court determined very recently per Madam Justice Heneghan, that the standard of reasonableness *simpliciter* must be applied to matters involving the genuineness of a marriage. These questions are mixed, i.e. of fact and law. Heneghan J. writes the following at paragraph 11 of *Apaza v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 313, [2006] F.C.J. No. 397 (QL):

> On balance, the four factors tend toward according some deference to the decision of the Immigration Officer. I conclude that the applicable standard of review is reasonableness simpliciter. This standard was applied by the Supreme Court of Canada in *Baker* . . . in respect of a discretionary decision of a visa officer.

Considering the applicable standard, I determine that the immigration officer's reasons in support of both aspects of the impugned decision were reasonable.

ANALYSIS

[13] With regard to the first part of the impugned decision, namely the genuineness of the marriage, the immigration officer interviewed the spouses separately to ensure that their marriage was in good faith. During the first meeting, the spouses were questioned regarding specific aspects of their daily life, such as what they had for breakfast. Based on the many inconsistencies identified, the immigration officer explained to the spouses that it was impossible for her to accept the application under such circumstances.

[14] That same day, she called another meeting to give them a second chance. At this meeting, she warned the newlyweds. She advised them to seriously consider the second chance being offered to them, because this second interview could alone determine the outcome of the application. On the date of the second interview, the spouses did not show up for the appointment because it was cold. A third interview date was then scheduled. On that day, only Ms. Wandja Djeukoua showed up at the immigration officer's office. It should be pointed out that in the course of the parties' submissions before this Court, the plaintiff's counsel alleged that Mr. Achille did indeed show up for the third interview, but that he arrived late. However, no affidavit was filed to this effect before the Court and as it appears from the record, based on the applicant's claims that her husband would be there any minute, the immigration officer was willing to wait one hour before cancelling the interview. Once 60 minutes had gone by, she then advised the applicant, who was still on the premises, that she would have to review the application with the information already in the record.

[15] Therefore, to assess the validity of the marriage, the officer had to work with the many inconsistencies identified during the spouses' first separate interviews. On reviewing the record, it is

difficult to imagine that these two people could have ever truly lived together. They appear rather to live light years apart. Here are a few of the inconsistencies identified during the first interview and reproduced in the interview notes:

> [TRANSLATION]
>
> During the second interview on January 13, 2006 at 1:30 p.m., I noted several inconsistencies, including the following:
>
> Client states that she got up first today around 6:00 or 7:00 a.m., her spouse/sponsor states that he got up first around 8:00 a.m. as usual and that the client got up at 9:30- 10:00 a.m.
>
> Client states that her spouse did not have breakfast with her and that she thinks he snacked on some peanuts, her husband states that they had breakfast together and that they had bagels with cream and coffee.
>
> Client states that when she arrived home, her husband then left, telling her: I'm leaving for work. Her husband states that he did not see the client during the day yesterday.

[16] The applicant's counsel argued that the documentary evidence submitted in this proceeding, such as the marriage certificate, the residential lease and the electric bills, are sufficient to establish the validity of the marriage. Remember that when an immigration officer has to determine whether a marriage is in good faith, it is the parties' intention that must be examined. In other words, such an assessment is based on the credibility of the spouses; documentary evidence alone is not enough to decide it. On this point, Rouleau J. properly states the following at paragraph 10 of *Canada (Minister of Citizenship and Immigration) v. Agyemang*, [1999] F.C.J. No. 776 (QL), regarding the role of the visa officer:

> The visa officer, in conducting an assessment, must consider the authenticity of the marriage from the perception and motives of the sponsored spouse. The legal form of the marriage is irrelevant; see *Horbas v. Canada* (M.E.I.), [1985] 2 F.C. 359 (F.C.T.D.).

This manner of assessment also applies to the immigration officer, although one must remember that the officers have a discretionary power that visa officers do not have and that, accordingly, their role is not limited to the systematic application of the *Immigration and Refugee Protection Regulations*, *supra*.

[17] The finding that Ms. Wandja Djeukoua's marriage was in bad faith is eminently reasonable. From the moment when the applicant's credibility is deemed unsatisfactory, it is no longer necessary to take the documentary evidence into consideration. Unlike *Awuah v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1873, the immigration officer's decision is supported by the evidence as it appears in the record, and it would be wrong to argue that the findings that she made on that basis were illogical.

[18] With regard to the second part of the impugned decision, namely the permanent residence application for humanitarian and compassionate reasons, the immigration officer first assessed the family ties that the applicant had in both countries at the time the application was assessed, namely Canada and Cameroon. Ms. Wandja Djeukoua's professional life and future aspirations were then considered by the immigration officer. Her parents, both of her sisters, her three brothers and her twins left behind in Yaoundé still live in Cameroon. While in Canada, the applicant had a job and a marriage of convenience. In the file notes, the immigration officer determined as follows regarding this aspect of the application:

> [TRANSLATION]
>
> Taking into consideration the fact that the marriage does not appear to be in good faith, I find that it would not be undeserved or disproportionate to require the client to apply for residence from outside Canada.

> . . .
>
> The hardship that the client will endure if she must apply for permanent residence from outside Canada is directly related to the application of immigration legislation and is not disproportionate or unusual.
>
> The exemption under L25(1) is therefore refused.

[19] This decision is reasonable. The immigration officer did not make a reviewable error. In the case at bar, the immigration officer's findings regarding humanitarian and compassionate grounds are supported by the evidence, and logically so.

[20] It is important to bear in mind that the immigration officer's two-part decision involves an application that is exceptional and that it is not this Court's place to substitute its assessment for that of the officer. This Court must act with deference.

[21] For all of these reasons, I dismiss the application.

[22] No serious question of general importance was addressed to the Court for certification.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. There is no question to certify.

"Sean Harrington"
Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1880-06
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