Date: 20071127

Docket: IMM-5950-06

Citation: 2007 FC 1205

Ottawa, Ontario, November 27, 2007

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

KRZYSZTOF SLAWINSKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the immigration officer (the officer) dated October 4, 2006 wherein the officer determined that Mr. Slawinski (the applicant) did not meet the requirements of the spouse or common-law partner in Canada class.

BACKGROUND

[2] The applicant is a failed refugee claimant from Poland.

[3] He entered Canada in September 2002 as a temporary resident and he claimed refugee protection in July 2003. His claim was refused on April 13, 2005. On the same date, his departure order entered into force.

[4] On June 29, 2006, he applied for permanent residence in Canada on the basis that he had been in a common-law relationship with Agnieszka Barbara Robakowska, a permanent resident of Canada, for a year at the time of his application.

DECISION UNDER REVIEW

[5] The officer denied the application on the basis that he did not meet the requirements of paragraph 124(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations). He found specifically, that the applicant failed to demonstrate that he is the common-law partner of a sponsor with whom he has cohabited in Canada for a year.

ISSUE FOR CONSIDERATION

[6] Did the officer err in law by failing to consider relevant evidence?

PERTINENT LEGISLATION

[7] The following provisions are relevant to this application:

The Act:

Definitions	Définitions
1. (1) The definitions in this subsection apply in the Act and in these Regulations.	1. (1) Les définitions qui suivent s'appliquent à la Loi et au présent règlement.
"common-law partner" means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*) […]	«conjoint de fait » Personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*) […]

The Regulations:

Member	Qualité
124. A foreign national is a member of the spouse or common-law partner in Canada class if they	124. Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :
(*a*) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;	*a*) il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;
(*b*) have temporary resident status in Canada; and	*b*) il détient le statut de résident temporaire au Canada;
(*c*) are the subject of a sponsorship application.	*c*) une demande de parrainage a été déposée à son égard.

STANDARD OF REVIEW

[8] Determining whether there was sufficient evidence to prove that the applicant lived in a common-law relationship of one year with his sponsor at the time the application was submitted

is a pure question of fact. Therefore, the applicable standard of review is patent unreasonableness (*Vehniwal v. Canada (Citizenship and Immigration)*, 2007 FC 279 at paragraph 12).

ANALYSIS

[9] The applicant submits that the officer erred in determining that he did not reside with his sponsor on the evidence that was put before the officer.

[10] The officer, in his decision, stated the information on which he based his findings. The "hand written letter on unexplained letterhead stating that Mr. Slawinski has been a tenant at Jameson since March 2005" which was brought in lieu of the rental agreement the officer had asked him to bring to the interview is clearly mentioned.

[11] The fact that the officer did not mention the oral explanation given by the applicant as well as two rent cheques payable to Myriad Property Management dated April 4, 2006 and May 4, 2006 does not mean that the officer did not consider them.

[12] Madam Justice Judith A. Snider recently held, in *Murphy v. Canada (Attorney General)*, 2007 FC 905, at paragraph 13: "[a] tribunal is presumed to have considered all of the material before it and is not obliged to refer to each and every document."

[13] Essentially, the applicant is asking this Court to consider the concerns raised by the officer and the explanations provided by the applicant in reply, and to re-weigh those explanations to come to a different conclusion, which it is not the place of this Court to do.

[14] Having carefully considered the decision of the officer, I cannot conclude that he based his decision on an erroneous finding of fact that he made in a perverse or capricious manner or without regard for the material before him.

[15] The rent cheques payable to Myriad Property Management and the oral explanation for not having a rental agreement in the name of both him and his sponsor are elements that the officer could reasonably assign little credibility in order to conclude that the applicant had not been living with his sponsor for a year.

[16] The officer's decision was not based primarily on the failure of the applicant to produce a rental agreement. Rather, the officer concluded that there was insufficient credible evidence proving joint residency.

[17] The applicant's record before this Court contains evidence that contradicts the officer's conclusion that the applicant provided phone bills that dated back only to March 2006. Furthermore, the documents he submitted as Exhibit "B" of his affidavit: phone bills prior to March 2006, the bank statements in his name and those in the name of his company; and, correspondence from the Canada Revenue Agency, are nowhere to be found in the certified Tribunal Record. I would note that the letter from the Canada Revenue Agency is dated July 5, 2004 and bears the defendant's name at the address he declared in his application for permanent resident status but not for that period of time. To be more specific, he declared at question 9 of

his application that he was living at 7230 Darcel Avenue, Apt. 123 from May 2003 to February 2005 and the letter dated July 5, 2004 indicates his address as 130 Jameson Avenue Apt. 217.

[18] Since we do not have the transcript of the interview, I find it difficult to accept the applicant's statement that these documents were put forward at the interview and that the officer made a copy of the said documents. I find this because those documents, which clearly are contradictory to the decision, are specifically not mentioned in the Tribunal Certified Record.

[19] Given that, barring exceptional circumstances, evidence that was not before the decision-maker is not admissible before the Court on a judicial review proceeding (*Bekker v. Canada*, 2004 FCA 186 at paragraph 11) and given that the applicant did not even try to submit this evidence as new evidence but as evidence already put before the officer, the Court cannot review the officer's decision based on these documents.

[20] In my view, the applicant failed to provide sufficient valid evidence that this Court should intervene.

[21] For all the above reasons, this judicial review is denied.

[22] No question for certification was suggested.

JUDGMENT

1. The application is denied.

2. No question for certification.

"Pierre Blais"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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