

**Date: 20080403**

**Docket: IMM-2845-07**

**Citation: 2008 FC 424**

**Ottawa, Ontario, April 3, 2008**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**JANICE YOLANDA DICKENSON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant is asking for judicial review of a decision that she was not a member of the “spouse-in-Canada” class. The principal finding against the Applicant was that there was insufficient evidence of cohabitation – cohabitation with the sponsor being one of the requirements to obtain a permanent residence status under this class (Regulation 124).

[2] Counsel for the Respondent argued first in this instance because he quite properly recognized that if this decision was a credibility finding rather than a sufficiency finding, judicial review should be granted because the Applicant had not been afforded an interview.

[3] As I indicated orally, despite the fine efforts of the Respondent's counsel, I have concluded that the decision was in reality a finding of credibility against the Applicant.

[4] I have concluded this because the Applicant filed an affidavit confirming cohabitation and outlining at least some of the circumstances of that cohabitation. On the other hand, there were documents filed by the Applicant, such as a furniture purchase invoice, which documents the official determined were insufficient to establish cohabitation.

[5] The documents do not, on their face, impugn the Applicant's affidavit – they could in context either support or undermine the Applicant. The officer took them as being insufficient for cohabitation purposes without addressing the context and without addressing the sworn evidence. The officer's conclusion on the sufficiency of those documents directly attacks the Applicant's credibility.

[6] Therefore, as this is a matter of credibility which the Applicant had no opportunity to address, natural justice and fairness were breached.

[7] This judicial review will be allowed, the negative decision quashed and the matter remitted to a different officer. The Applicant will have an opportunity to file further evidence on the issues in that matter. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is allowed, the negative decision is quashed and the matter is to be remitted to a different officer. The Applicant will have an opportunity to file further evidence on the issues in that matter.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2845-07

**STYLE OF CAUSE:** JANICE YOLANDA DICKENSON

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 2, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** April 3, 2008

**APPEARANCES:**

Ms. Alesha Green FOR THE APPLICANT

Mr. Gordon Lee FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

GREEN, WILLARD LLP FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

MR. JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario