Federal Court  Cour fédérale

Date: 20120302

Docket: IMM-4913-11

Citation: 2012 FC 286

Vancouver, British Columbia, March 2, 2012

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MARIANA GANGUREAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought forth under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. It seeks to set aside the decision of immigration officer J. Poon [the officer] taken on July 15, 2011, refusing the applicant's application for permanent residence in Canada as a member of the spouse or common-law partner in Canada class. The officer was not satisfied that the marriage had not been entered into in bad faith, as set out in section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

I. Background

[2] Ms. Mariana Gangurean [the applicant], a 27-year-old citizen of Moldova, entered Canada on August 17, 2009 on a study permit to attend English Bay College's hospitality program. She was also issued work authorization until July 28, 2010 so that she could complete the program's work practicum.

[3] On September 1, 2009, she met her husband Mr. Brian Raby, fifteen-years her senior. They married two and a half months later on November 15, 2009.

[4] On or about January 23, 2010, Mr. Raby applied to sponsor the applicant for permanent residence. The applicant then received a letter dated June 14, 2011, in which she and her husband were asked to attend an interview and to bring along supporting documentation pertaining to their relationship. The interview was held on July 11, 2011.

II. Impugned Decision

[5] The officer's reasons are dated July 15, 2011, four days after the interview was held. In them, the officer notes that the applicant and her husband provided very similar answers regarding their first meeting, their marriage proposal, the wedding ceremony, and their living arrangements. She also attributed positive weight to the documentary evidence submitted, which included cell phone bills showing ongoing contact between the couple, joint bank account information, joint medical coverage, tax return information which listed spouses, a letter from the apartment manager stating that the applicant and sponsor lived together, and photos showing the couple with family and friends.

[6] The officer concluded however that these positive factors were outweighed by negative factors, namely seven discrepancies identified during the interview. For example, when asked about the Vancouver riots that had taken place exactly a month earlier, the applicant stated that her husband came home at around 9 or 10 o'clock in the evening because the place where he worked closed early. By contrast, her husband stated that he stayed to make sure windows were not smashed and that he probably got home around 1 or 2 o'clock in the morning. Five other discrepancies arose when discussing the couple's activities of that morning and the previous two days (Trial Record [TR] at 5-6):

- The applicant stated that on the Saturday before the interview, the sponsor worked from 9am to midnight whereas the sponsor stated that he worked from 3pm until 7am Sunday.

- The applicant stated that on the Sunday her husband woke up at 7am, early in the morning, not after 9am. In contrast, the sponsor stated that he got up late probably around 3pm.

- The applicant stated that on the Sunday before the interview, they had ham and jalapeno cheese sandwiches whereas the sponsor stated that they did not have lunch together.

- The applicant stated that they did not have dinner on the Sunday before the interview because they didn't want to eat. She stated that they had a shot of Vodka so that they could fall asleep, and that the sponsor bought popcorn, but she didn't make it, and he bought two chocolate bars, which they had, and that's all they had for dinner. In contrast, the applicant stated that they had rice and smokies, or sausages, for dinner.

- The applicant stated that they made love on the Sunday before the interview in the afternoon around 3, 4 or 5pm and watched the movie "Bad Teacher" around 7pm. The sponsor also stated that they were in bed watching movies on the computer around 8pm, watching the movie "Bad Teacher". However, the sponsor stated that they made love right after the movie probably just after 8pm.

- The applicant stated that on the morning of the interview, the sponsor woke her up at 5am and that she didn't take a shower.

> The sponsor also stated that he woke her up at 5am. However, he stated that she wanted to be up early so that she could take a shower, and that he had his shower first and then she had her shower.

[7] The officer also noted that the applicant met her husband approximately two weeks after arriving in Canada, married him approximately two and a half months later, and that the quickness with which she met and married her husband after her entry to Canada led her to find the marriage was entered into for immigration purposes. The officer concluded that, on the balance of probabilities, the marriage was not genuine and had been entered into primarily for the purpose of acquiring permanent residence in Canada.

III. Issue and Standard of Review

[8] The parties have essentially raised one issue: Did the officer err in determining that the marriage was entered into in bad faith, pursuant to section 4 of the IRPR?

[9] Reviewing such a determination raises a question of mixed fact and law and requires the application of the standard of reasonableness (*Provost v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1310 at para 23, [2009] FCJ 1683). This standard requires justification, transparency, and intelligibility within the decision-making process and that the decision fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR [*Dunsmuir*]).

IV. Analysis

[10] The applicant argues that the officer reached her decision by relying on a handful of trivial inconsistencies while discounting overwhelming evidence that the couple was cohabitating and

interdependent. She points to a series of documents that indicate the couple share the same address and also refers to other evidence showing they had combined their lives. For example, she notes that she has purchased life insurance for her husband and named herself as beneficiary. The applicant submits that in the face of such compelling evidence, the officer's decision is unreasonable.

[11] Having reviewed the documents referred to by the applicant and the reasons provided by the officer, I cannot agree that the officer ignored any evidence. Rather, the officer attributed positive weight to the documentary evidence submitted, listing the cell phone bills which showed ongoing contact between the couple, joint bank account information, joint medical coverage, tax return information which listed spouses, a letter from the apartment manager stating that the applicant and sponsor lived together, and photos showing the couple with family and friends. The officer is presumed to have weighed and considered all of the evidence and I have not been convinced of the contrary (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ 598 and *Hassan v Canada (Minister of Employment and Immigration)*, [1992] FCJ 946).

[12] Indeed, the officer based her decision on the quickness of the marriage after the applicant's arrival and on the inconsistencies which she identified in the reasons. The applicant explains that the marriage was not that quick and that the inconsistencies were caused by normal deficiencies in human memory, by the officer's misunderstanding of her answers, and by other simple and reasonable explanations. She argues that she and her husband were never given an opportunity to respond to the officer's concerns. She also asserts that because her explanations were not before the officer, she did not include them in her affidavit. I do not find the applicant's arguments compelling on this point. The officer identified several factual contradictions between the testimony of the applicant and that of her husband. The first contradiction, though occurring a month earlier, concerned a very notable event – the Vancouver Riots – which was surely engrained in most

Vancouver residents' memories. The officer could reasonably expect that both the applicant and her husband would have a substantially consistent account of where they were that night and the inconsistency identified was significant. Did the applicant's husband return early because of the riots, or did he stay at his work several more hours to guard his workplace? Moreover, the six other contradictions concerned simple events of previous days prior to the interview. These were questions which one could reasonably expect the couple to be consistent about, for example, did the applicant shower that morning or not? The fact the applicants could not provide a consistent account of the previous two days, contradicting each other significantly on several points, was reasonably a cause for concern. They were important and should have been correctly answered by both the applicant and the sponsor. After all, they were just events of the past days.

[13] It is true that the officer identified only six discrepancies out of more than seventy questions asked during the interviews, but they are significant when assessing the daily life of a couple. The content of a meal taken together, the time when each member of the couple woke up and whether or not they took a shower, the hours of work of the sponsor and the time of their intimate relationship are events that each member of a couple should remember, and more so when those events occurred in the last two days before the interviews. Such discrepancies can only influence a decision-maker.

[14] Accordingly, I find that it was open to the officer to deem the marriage not *bona fide* as set out in section 4 of the IRPR and the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para 47).

[15] The parties did not suggest any question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question will be certified.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-4913-11**
STYLE OF CAUSE:	**MARIANA GANGUREAN v MCI**
PLACE OF HEARING:	**Vancouver, BC**
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APPEARANCES:

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