

Federal Court



Cour fédérale

**Date: 20130326**

**Docket: IMM-5918-12**

**Citation: 2013 FC 312**

**Ottawa, Ontario, March 26, 2013**

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

**BETWEEN:**

**SAU LING TONG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks to set aside a decision made by an Immigration Officer (Officer) denying her application for a permanent residence as a member of the Spouse or Common-law partner in Canada class. The Officer determined that the applicant's marriage was entered into primarily for immigration purposes. For the reasons that follow the application is dismissed.

***Facts***

[2] The applicant, Ms. Tong, is a citizen of China. She first visited Canada on July 22, 2009. She stayed with her uncle. She extended her visitor's visa and remained in Canada until February 2010.

[3] Five months later, on July 2, 2010, the applicant attempted to re-enter Canada as a visitor but she was denied entry and detained based on the suspicion that she may not leave Canada at the end of her authorized stay. On July 6, 2010, the applicant made a refugee claim and she was released on a bond with terms and conditions.

[4] Seven months later the applicant married Mr. Wang, a Canadian, on January 29, 2011. She applied for permanent residence under the Spouse-in-Canada class on June 1, 2011. On July 11, 2011 the applicant withdrew her refugee claim.

[5] The applicant met her husband in 1989 in Beijing when she was 17 years old. Mr. Wang lived near her father, whom she visited during the school holiday. She saw Mr. Wang again in 1992 while working as a tourist guide. She would bring tour groups to the restaurant where he worked. Mr. Wang would later immigrate to Canada but he sent her a post-card each year.

[6] The applicant married her first husband in 1997 and in 2002 they moved to Hong Kong. When her husband became angry and abusive she began working so she could support herself and leave him. They separated in 2008 and divorced in 2010.

[7] Her mother suggested she visit her uncle in Canada so she could take a break from her marital problems. She did so in 2009 and reconnected with Mr. Wang. They traveled and visited tourist sites together. Mr. Wang gave her gifts and money. When she left, she promised to return to Canada to see him again.

[8] When she returned to Canada in 2010, Mr. Wang had joined the Royal Canadian Navy. He visited her in Toronto and asked her to marry him. They married on January 29, 2011 and now live together.

### ***Decision Under Review***

[9] In a letter dated May 30, 2012, the Officer refused her application for permanent residence status pursuant to subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*) which provides that:

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|---|--|
| 4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership | 4. (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas : |
| (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or   | a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;   |
| (b) is not genuine.   | b) n'est pas authentique.  |

[10] The Officer subsequently provided a document titled "Reasons for decision made on 24 May 2012" to elaborate on the basis for the decision.

[11] The Officer noted that this was Mr. Wang's third spousal sponsorship. While she considered this "somewhat unusual" she noted that it was not itself a reason to believe that his current marriage was not genuine.

[12] The Officer noted that the applicant and her husband gave consistent answers to questions regarding their daily routine and interests. Additionally, the applicant provided a number of photographs, letters and calling cards. The Officer found that she "must question the extent of this documentation" because it appeared that the evidence was kept for the purpose of the permanent residency application.

[13] The Officer considered there to be "a great number of inconsistencies" which led her to question the credibility of the parties and to believe that the marriage was entered into primarily for immigration purposes:

- a. On her application to extend her visitor's visa the applicant stated that she was renting an apartment in Toronto. However, it was later revealed that she was staying with her uncle in his apartment.
- b. Upon her arrival to Canada in 2010 the applicant stated that she was not employed. However, on her application for permanent residence she mentioned that she was employed as an aesthetician before entering Canada in 2009 and upon her return in 2010.
- c. She made a refugee claim "without basis" which indicated that she had a desire to remain in Canada "at all costs."

- d. It was “odd” that neither the applicant’s uncle nor Mr. Wang were her bondsperson.
- e. Mr. Wang stated that he divorced his first wife because she did not wish to immigrate to Canada. However, when he sponsored his second wife, he stated that his first divorce was the result of her infidelity.
- f. Mr. Wang stated that he and his second wife separated because she was used to a “decent” life in China and did not wish to work in Canada. The Officer considered this a contradiction because Mr. Wang’s second wife came from a rural area in China and worked as a waitress prior to immigrating.
- g. The parties stated that they had no joint property or life insurance policies with each other as a beneficiary. They did have a joint bank account but the balance was low and there had been large cash withdrawals. There was one recent withdrawal of \$8,000 which Mr. Wang said was to pay medical bills for the applicant’s mother in China. The Officer questioned this explanation because they did not have much money in the account and because the applicant had her own savings.
- h. Mr. Wang provided a will signed after the interview naming the applicant as his beneficiary. He also provided two references verifying their relationship. The will stated that Mr. Wang was 40 when he in fact was 44. The Officer also questioned why these documents were not provided before the interview.

*Issue*

[14] The sole issue for this judicial review is whether the Officer reasonably determined that the marriage was entered into primarily for the purpose of acquiring status. In applying the standard of

reasonableness, a court considers “the existence of justification, transparency and intelligibility within the decision-making process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, para 47. The applicant contends that the reasons do not meet this standard.

[15] The applicant further contends that the Officer breached procedural fairness in not providing the applicant an opportunity to address some of the alleged inconsistencies in her evidence, or in failing to ask reasonable supplementary questions to answer which would have alleviated any concern the Officer may have had.

[16] The applicant also submits that the Officer breached procedural fairness by providing inadequate reasons. However, while the decision letter is brief, detailed reasons were later provided. Additionally, adequacy of reasons is not a stand-alone basis to challenge a decision. Rather, the reasons must be read together with the outcome and show whether the result falls within a range of possible outcomes: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, para 14. Therefore, there is no issue as to procedural fairness.

### ***Analysis***

[17] As a preliminary issue, the applicant has provided substantial additional evidence on this judicial review application, contained within her affidavit and her written submissions. Judicial

review is conducted on the basis of the evidence which was before the decision maker. Therefore, I have not considered any evidence which was not before the Officer.

[18] I accept counsel's submissions that some of the inconsistencies, when viewed individually, are minor. I also accept that there may have been an explanation which rationalized some of the inconsistencies. I do not find, however, that this renders the decision unreasonable or that there has been a breach of procedural fairness.

[19] The Officer was entitled to take a close look at the discrepancies in the evidence given the applicant's immigration history and the fact that this was the third time the sponsor had sponsored a wife from China. The circumstances of those prior applications, and the brevity of the subsequent marriages, support closer scrutiny of what might otherwise be inconsequential discrepancies in the evidence. It is to be recalled that the sponsor and his first wife separated shortly after she became a permanent resident, and they were divorced 22 months later. The marriage lasted less than three years. The second marriage ended after four years. Notwithstanding the prior history, the Officer recognized that the case had to be answered on its merits and that the critical issue was whether the marriage before her met the requirements of the *Regulations*.

[20] The Officer drew a negative inference as to the genuineness of the marriage from inconsistent testimony from the applicant as to whether she was employed prior to her arrival in Canada and as to where she resided on her arrival. Similarly, the Officer was free to infer from the withdrawal of the refugee claim that it had no foundation. While the applicant offered an

explanation, the Officer was not bound to accept it and the inference to be drawn was open to her on the evidence.

[21] I also find that the Officer was entitled to draw an inference from the discrepancy in the sponsor's evidence with respect to the reasons for the failure of the first marriage. In his evidence he said it was by reason of a difference of opinion as to where they were to live. His wife wanted to live in the United States and he in Canada. In his sponsorship application however, he said the reason for the failure was because of her infidelity. This is a significant inconsistency.

[22] The Officer observed that, apart from a joint bank account, the applicant and sponsor had no joint property or life insurance policies that named each other as beneficiaries. A will, executed May 24, 2012 by Mr. Wang was received after the interviews on May 28, 2012. It named the applicant as a beneficiary. However, Mr. Wang's condominium in Toronto is owned jointly with his father.

[23] The bank statements for the joint account, covering a two year period, showed minimal balances, with a large cash deposit and withdrawal of \$8,000. When asked to explain the purpose of the withdrawal Mr. Wang said it was to pay for his mother-in-law's medical expenses in China. The Officer questioned this explanation having heard from Ms. Tong that she had \$10,000 of her own savings in a separate account.

[24] Finally, the Officer noted the correspondence between Ms. Tong and Mr. Wang, as well as telephone bills indicating calls from Ms. Tong to Mr. Wang while on training. The records begin in



2010 and conclude with the permanent residency application in May of 2011. The Officer concluded that:

... the evidence of their relationship has been purposely kept in such fashion as to be presented for the specific purpose of a permanent residency application.

[25] Again, looking at this evidence as a whole and in light of their respective immigration histories, this conclusion was open to the Officer on the record before her.

[26] To conclude, while the applicant and her sponsor have rationalizations or explanations for some of the points in issue that the Officer found troublesome, the onus on providing an evidentiary foundation for a successful permanent residence application rests with the applicant and sponsor. They must put their best case forward. After all, it is the applicant and sponsor who know and understand all aspects of their history and relationship and the onus lies on them to address *lacunae*, gaps or discrepancies reasonably arising in their histories. While I accept counsel's argument that procedural fairness issues might arise if the Officer's questioning did not allow for full answers those concerns do not arise in the facts of this case.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question for certification.

"Donald J. Rennie"

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Judge

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

**DOCKET:** IMM-5918-12

**STYLE OF CAUSE:** SAU LING TONG v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** March 14, 2013

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

**DATED:** March 26, 2013

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