

Federal Court



Cour fédérale

Date: 20130816

Docket: IMM-10951-12

Citation: 2013 FC 877

Montréal, Quebec, August 16, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

ARIFUR RAHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Citizenship and Immigration Canada (CIC) denied Mr. Arifur Rahman's application for permanent residence under the spouse or common-law partner in Canada class, as defined in section 124 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], finding that he was a foreign national described in its subsection 4(1), as amended. Upon review of the evidence on record, the immigration officer [the Officer] concluded that the applicant's marriage with his sponsor, Ms. Kamrun, was a "relationship of convenience" and was entered into primarily

for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The applicant seeks judicial review of that decision, arguing that the Officer committed a reviewable error by focusing on certain interview questions and answers which disclosed minor contradictions, while ignoring the testimonial and documentary evidence that was more favourable to his case.

Background

[3] The applicant is a forty-nine-year-old citizen of Bangladesh. On January 31, 2008, he left his native country and made a refugee claim in Canada. He left behind his two minor children, whose mother had passed away in 2000.

[4] On May 30, 2012, the applicant's claim for refugee protection was rejected by the Immigration and Refugee Board, and leave for judicial review of that decision was denied by this Court in June 2012.

[5] On January 8, 2010, the applicant married Ms. Kamrun, a twenty-nine-year-old Bangladeshi national and Canadian citizen. He states that he had first met her on February 8, 2008, at the YMCA in Montreal, and that over the next few months, their relationship gradually developed into a committed, romantic one.

[6] This was Ms. Kamrun's second marriage. She married her first spouse on February 21, 2004 in an arranged marriage. She sponsored her first husband's application for permanent residence in Canada on August 31, 2004, and lived with him until August 2007. No children were born of that marriage and the couple divorced on June 17, 2009.

[7] On August 19, 2010, the applicant filed an application for permanent residence under the spouse or common-law partner in Canada class, sponsored by his new wife.

[8] The applicant and his wife were interviewed by the Officer on August 30, 2012 and September 26, 2012 respectively. On October 12, 2012, the Officer dismissed the applicant's application because she was not satisfied that the couple was in a genuine relationship. Furthermore, the evidence established that, on a balance of probabilities, the applicant's marriage with his sponsor was entered into primarily for the purpose of acquiring a status or privilege under the Act.

Decision under Review

[9] The Officer raised a number of inconsistencies between the answers provided by the applicant and his sponsor at their interview, along with other deficiencies in the evidence filed in support of the application, which led her to doubt the genuineness of their relationship. In her decision, the Officer notably refers to:

- The wedding ceremony and reception: The applicant and his wife both stated that they were married at the Montreal courthouse, but the more detailed information that they provided regarding the post-wedding reception was contradictory. Moreover, the Officer found that no documentary evidence or photographs were submitted to support the couple's allegation that the wedding was followed by a religious ceremony at a mosque;
- The little interest associated with this important event: The applicant stated that there was no ceremony on the day of their marriage because it had been held on a week day,

and they both had had to return to work afterward. The applicant's wife did not remember which day of the week the ceremony was held on. Moreover, the photographs taken at the restaurant where the applicant and his wife allegedly celebrated their marriage do not establish that it was indeed the location of a wedding reception;

- The absence of the sponsor's family at the wedding ceremony: Upon examination of the wedding photographs, the Officer observed that no member of the sponsor's family attended her marriage. The sponsor had stated that her mother was present (although not in the photographs), but her father had not attended the ceremony as he had to be at work;
- The engagement and wedding rings: The Officer found that the rings the applicant and his wife were wearing were not real wedding rings. Furthermore, neither the applicant nor his sponsor could remember the name of the jewellery stores where they purchased the rings;
- Their divergent plans for the future: The Officer found that the couple did not have any common plans for their future life together;
- The lack of communication surrounding the applicant's immigration status: The applicant stated that his wife was aware of the fact that he was subject to a removal order, and said that she would follow him to Bangladesh should his application for permanent residence be refused. However, his sponsor, when asked in her interview about what she would do should such a situation develop, spontaneously answered that she would not return to Bangladesh. When confronted with his wife's answer, the applicant stated that they had in fact not yet discussed the matter. The Officer found that this demonstrated a lack of communication between the spouses on a crucial matter that would affect their relationship. The Officer stated that she had serious doubts that the relationship would continue in the event that the permanent residence application was refused and the applicant returned to his country of origin;
- The circumstances of their first meeting: The applicant stated that he had first met his sponsor at the YMCA in the elevator, he had started a conversation with her, she had given him her phone number, she had then called him, and they had met up again two or three days later. Meanwhile, in his application, the applicant had mentioned that he had first seen his wife while she had been studying at the YMCA where he had lived, he had started a conversation with her, and she had called him three days later. However, for her part, the sponsor stated that they had exchanged phone numbers and the applicant had called her later that same evening to go out to a restaurant for dinner;
- Whether the relationship between the applicant and his wife was known to their respective families and friends: The applicant stated that he had informed his parents of his relationship with the sponsor only when they had decided to get married. The sponsor explained that her parents had been unaware that she had been dating the applicant and that is why the applicant did not remember the name of the street where her parents live. The Officer observed that the applicant provided a list of friends' names

without specifying their relationships or ties to him or to his wife. The Officer also noted that none of the photographs of the couple taken with friends or family members established that they were perceived as a couple in society;

- Their period of cohabitation: The applicant stated that the couple moved in together in either February or March 2010 as they had lived with his in-laws immediately after having gotten married. Meanwhile, in his application, the applicant stated that he had started living with his wife as of January 8, 2010, the day of their wedding ceremony. As for the sponsor, she stated that they had moved in together two days after the wedding ceremony. When confronted with this contradiction, the applicant explained that for a month after their marriage, he had continued living with his roommates while his wife had lived with her parents. They both confirmed that they had moved in together only in February 2010. The lease on record showed, however, that they had taken possession of their apartment only on March 1, 2010 for a period of twelve months. The Officer found the fact that the applicant and his wife had not rented lodgings prior to their wedding, even though they had been dating for two years by that point in time, showed that their relationship lacked seriousness;
- When and where the marriage proposal was made: The applicant stated that he had proposed in 2009 in a restaurant but he could not recall its name. For her part, the sponsor did not recall the date, the place or the circumstances of her marriage proposal.

[10] When she confronted the couple with the inconsistencies she detected between their narratives, the Officer was not convinced by their explanations. She believed that their responses to her interview questions simply sought to fill in the holes of their respective original statements.

[11] Accordingly, the Officer concluded that the applicant was a foreign national described in subsection 4(1) of the Regulations and refused his application for permanent residence.

Issue and Standard of Review

[12] The only issue raised by the applicant in his written submissions is whether, based on the evidence on record, it was reasonable for the Officer to find that the applicant failed to establish, on

a balance of probabilities, that his marriage with his sponsor is genuine and not entered into primarily for the purpose of acquiring a status or privilege under the Act.

[13] The parties are in agreement that determining whether a relationship is genuine or entered into for the purpose of acquiring a status under the Act is primarily a factual determination, reviewable under the standard of reasonableness (*Keo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1456 at para 8 [*Keo*]; *Amayeanvbo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 621 at para 26; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 432 at para 18; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417 at para 14).

[14] Such determinations should generally be left to the immigration officer, as should the assessment of credibility and the weighing of the evidence. As a result, this Court can only intervene if the officer's determinations, and thereby her decision, are based on erroneous findings of fact made in a perverse, capricious manner or if she made her decision without regard to the material before her (*Minister of Citizenship and Immigration v Tirer*, 2010 FC 414 at paras 10-11 [*Tirer*]; *Singh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 23 at paras 16-17 [*Singh*]).

Analysis

[15] The applicant argues that the Officer committed a reviewable error by focusing on certain interview questions and answers which disclosed minor contradictions, while ignoring the testimonial and documentary evidence that was more favourable to the applicant's case. This argument does not hold up for two main reasons.

[16] First, the Officer was correct in focusing on and relying upon, in her decision, the discrepancies and deficiencies that she detected in the evidence. The Officer's role in this instance was to review and comment on the evidence put before her in order to determine, on a balance of probabilities, the genuineness of the couple's relationship. In doing so, she was to reasonably consider both the positive and negative factors in the application. The Officer was then required to provide the applicant with the reasons for her decision: she was not required to provide reasons as to why she arrived at a certain decision, but only the reasons justifying her determination of his application. In his submission, the applicant states that the Officer failed to consider abundant documentary evidence which supported the *bona fide* of his marriage. Yet the applicant fails to specify any evidence that contradicts or seriously challenges any of the Officer's negative findings with regard to his application.

[17] Although the applicant may have preferred the Officer to focus exclusively on the evidence that, in the applicant's view, supported his case, this is not what is required of the decision-maker here (see *Tirer*, above, at paras 12-14). As such, even if some of the evidence supported a *bona fide* relationship, the applicant's argument amounts to no more than asking this Court to reassess the evidence in order to re-weigh the positive and negative findings of his application for the purposes of substituting its own opinion for that of the decision maker's. This is not the function of a judicial review. The decision-maker cannot be criticized for having relied upon some evidence relating to certain criteria regarding the genuineness of a relationship rather than upon other evidence, so long as both the negative and positive factors are reasonably assessed (*Canada (Minister of Citizenship*

and Immigration) v *Pierre*, 2012 FC 1169 at para 26; *Gangurean v Canada (Minister of Citizenship and Immigration)*, 2012 FC 286 at para 11).

[18] Second, the Officer's findings are reasonable and entirely supported by the evidence on record. Even if some of the reasons found in the decision regarding the couple's credibility are less relevant or compelling, on the whole, there is little in the record to support a finding that the impugned decision was based on erroneous findings of fact made in a perverse and capricious manner or made without regard to the evidence at hand.

[19] The Officer made the following findings of fact: that there was no corroborative evidence concerning the religious ceremony that the couple alleged was held in the mosque following the civil ceremony; that the sponsor's family members (including her father) were absent at the wedding ceremony; that the couple told conflicting narratives regarding the circumstances leading up to and surrounding the marriage; that there was a lack of evidence showing that the applicant and his sponsor were perceived as a couple by their family and friends; and that there was a lack of communication regarding important issues in their relationship such as the applicant's status in Canada and their common plans for the future. Coupled with other inconsistencies she found in the information the applicant and his wife provided at their respective interviews, the Officer rejected the application.

[20] On his part, the applicant argues that it was unreasonable for the Officer to expect that the applicant and his wife remember the date, the place and the circumstances of their first meeting, the marriage proposal itself or the day of the week that the marriage was held on, as these all had occurred more than two years prior to their interviews with the Officer. The applicant also argues

that it was unreasonable to expect that the couple would rent a place together before getting married. Moreover, he argues that it was unreasonable for the Officer to find, based on Western customs, that the couple's rings were not traditional wedding rings, without having first considered the possibility that Bangladeshi marital customs may differ from Western ones. The applicant also takes issue with the Officer's conclusions regarding Ms. Kamrun's lack of knowledge of the applicant's outstanding removal order. The sponsor submits that she was aware of his unsuccessful refugee claim but it could not be reasonably expected of her that she also be aware that his removal order may become enforceable at the end of the refugee application process. The applicant argues that this is a "technical issue" of which Ms. Kamrun was not informed.

[21] The Court should be hesitant to apply the holdings from other cases, as the determination of the genuineness of a relationship is a highly fact-driven analysis. When an immigration officer takes issue with a limited number of questions that were submitted to the applicant and his or her sponsor, the question is whether the inconsistencies detected in the evidence are *significant enough* for the officer to conclude to a lack of genuineness based solely on those inconsistencies (see *Singh*, above, at paras 24 and *Keo*, above, at para 24).

[22] Section 5.20 of Citizenship and Immigration Canada's *IP 8 - Spouse or Common-law partner in Canada class* provides criteria to assist the immigration officer in the determination of the genuineness of a relationship. The immigration officer is to investigate into the existence of the following factors: a significant degree of attachment, both physical and emotional; an exclusive relationship; a mutual and continuing commitment to a shared life together; and an emotional and financial interdependency. Specifically for the purposes of an analysis for subsection 4(1) of the

Regulations, the immigration officer is also to refer to OP 2 - *Processing Members of the Family Class* (the OP 2), which is intended to provide guidance as to the factors that should be considered in identifying a relationship of convenience.

[23] Section 12.1 of OP 2 offers the following factors for the immigration officer to consider :

- The circumstances and duration of the courtship;
- The wedding itself (where it was celebrated, what type of marriage, who attended it);
- Whether the marriage ceremony conformed to the beliefs and culture of the participants;
- Evidence that the spouses have lived together.

[24] Meanwhile, factors that the immigration officer may consider when assessing a common-law relationship, as listed in section 12.2 of OP 2, include:

- How the couple met and the circumstances that led them to decide to live together.
- The length of time the parties knew one another before they established a common-law relationship.
- How convincing is the evidence that the couple have lived together for at least one year? Is it sufficient?
- Have the parties combined their affairs to the extent that a reasonable person would expect of a couple in a conjugal relationship (vs. what could be expected of “room-mates”)?
- Do the couple demonstrate the level of interdependence expected of persons in a conjugal relationship?
- Is there evidence that the couple has established their own household and lives separately from their families in a conjugal relationship (rather than a sibling relationship), even if collocated with other family members? In some cases, DNA testing may be required to ensure that applicants are not blood relatives.

[25] There also exists considerable jurisprudence pertaining to an immigration officer’s assessment of the genuineness of a relationship. For instance, in *Keo*, above, at paras 23-26, Justice Martineau states that all the circumstances surrounding the marriage should be looked at by the officer or panel, who is presumed to have considered all of the evidence before it, and who should not be criticized for being punctilious in the assessment.

[26] I agree that the Officer's reasons are not flawless. There are several positive, but also other relevant negative factors, in the evidence that could have been also used to assess the application. However, the conclusions she based her decision on are reasonably drawn, and the factors she relied on, such as the specific circumstances of their first meeting, the proposal and the wedding ceremony, the significance of their marriage in the eyes of their respective families and friends, as well as the couple's lack of pre-marital planning for marital cohabitation, are within the bounds of those that are established by the jurisprudence and the Citizenship and Immigration Canada operational manuals. I am convinced that the impugned decision, when taken as a whole, in light of the entirety of the evidence and the Officer's detailed reasons, falls within "the 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).

[27] The onus is on an applicant to provide sufficient evidence to satisfy the decision maker that his or her relationship is genuine and that he does not fall under subsection 4(1) of the Regulations (*Nguyen v Canada (Minister of Citizenship and Immigration)*, 2012 FC 587 at para 19). The applicant failed to allege or to provide any evidence before the Officer that their choice of wedding rings was in accordance with Bangladeshi customs. Even if this argument could be considered persuasive in other circumstances, it is not sufficient in this instance to affect a review of the reasonableness of the Officer's overall decision.

[28] Finally, although I agree that the sponsor's lack of knowledge regarding the removal order and the procedures that are followed before a removal order becomes enforceable was not in and of itself enough to assess credibility about the genuineness of the couple's relationship, the fact that the

spouses had not yet contemplated the applicant's potential removal from Canada and had no common plans to deal with that situation should it have occurred, was a relevant and reasonable consideration in her assessment.

[29] Based on the foregoing, Mr. Rahman's application for judicial review is hereby dismissed.

No question of general importance is proposed by counsel and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”

Judge

Schedule

Relevant legislative provisions

Subsection 4(1) and section 124 of the Regulations read as follows:

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.

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.

[emphasis added]

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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