

Federal Court



Cour fédérale

Date: 20140107

Docket: IMM-2896-13

Citation: 2014 FC 7

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 7, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KADIO GUY RAYMOND ANDRÉ KOFFI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] It is well established in the case law of this Court that there is no specific criterion, or even a set of criteria, to determine whether a marriage is genuine pursuant to section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] (*Ouk v Canada (Minister of Citizenship and Immigration)*, 2007 FC 891 at para 13; *Zheng v Canada (Minister of Citizenship and Immigration)*, 2011 FC 432 at para 23; *Khan v Canada (Minister of Citizenship and*

Immigration), 2006 FC 1490 at para 20). It is exclusively up to the visa officer to determine the relative weight to grant each of the factors, based on the facts, to ensure the inherent logic of the applicant's story according to the particular clues, or references made by the applicant himself, meaning the encyclopedia of references, a dictionary of terms, a picture gallery of the applicant's file in addition to an assessment to determine whether the facts on file taken together create harmony or discord (*Keo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1456 at para 24; *Zheng, supra*).

II. Introduction

[2] The applicant is applying for judicial review, under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision by a visa officer dated April 3, 2013, refusing his permanent resident status on the ground that he was not a member of the Spouse or Common-law Partner in Canada Class under paragraph 124(a) of the Regulations.

III. Facts

[3] The applicant, Kadio Guy Raymond André Koffi, is a citizen of the Ivory Coast. He arrived in Canada with temporary resident status as a student, valid until March 31, 2011.

[4] On February 4, 2010, the applicant met his spouse, Imelda Palida Kalibi-Desmarais, at a party at a friend's place.

[5] The applicant and his spouse allegedly began a relationship after that day, and allegedly travelled to Tunisia together in July 2010.

[6] The applicant filed an application to extend his temporary resident status on April 14, 2011, two weeks after his visa expired.

[7] On June 25, 2011, the applicant and his spouse were married.

[8] On July 29, 2011, the applicant's application for extension was refused because he did not provide a Quebec Acceptance Certificate [CAQ].

[9] On August 1, 2011, the applicant and his wife began to live together, sharing accommodations with the applicant's cousin.

[10] On October 26, 2011, the applicant filed an application for permanent residence in the Spouse or Common-law Partner in Canada Class, accompanied by a spousal sponsorship application.

[11] On April 3, 2013, the officer dismissed the applicant's application for permanent residence, not convinced of the good faith of the marriage between the applicant and his wife.

IV. Decision presently under judicial review

[12] In her decision, the officer found that the evidence presented by the applicant was insufficient to establish that his marriage to Ms. Kalibi-Desmarais was in good faith.

[13] The officer relied on the following factors to conclude that the applicant's marriage was not genuine:

- a. The applicant provided a certificate from the Ivory Coast police that indicated he was "single" three months after his marriage was held;
- b. The couple has been living with other people since they began living together, despite the fact the applicant receives financial support from his mother and his wife works full time;
- c. During his interview, the applicant did not recall whether his wife had met his mother when they travelled together to Tunisia, and his explanations were confused and evasive;
- d. The marriage between the applicant and his wife took place without their parents and their explanations for this absence were unclear, confused and unlikely;
- e. During his interview, the applicant lied to the officer, making her believe he had paid fines at the Municipal Court of Montreal, when this was not the case;
- f. The applicant allegedly came to Canada to attend university, but he failed all his courses during his first session because of absences, and had similar results in his second session;
- g. The applicant applied for an extension of his status without providing a valid CAQ despite the fact he had already had to apply for a CAQ for his initial study permit;
- h. The applicant married his wife less than three months after his status in Canada had expired;
- i. The applicant contravened the IRPA by studying in Canada despite his lack of status.

V. Issue

[14] Did the officer err by finding that the applicant's marriage was not genuine?

VI. Relevant legislative provisions

[15] The following provisions from the Regulations are applicable and relevant:

Bad faith	Mauvaise foi
<p>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</p> <p style="padding-left: 40px;"><i>(a)</i> was entered into primarily for the purpose of acquiring any status or privilege under the Act; or</p> <p style="padding-left: 40px;"><i>(b)</i> is not genuine.</p> <p style="text-align: center;">...</p>	<p>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 :</p> <p style="padding-left: 40px;"><i>a)</i> visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;</p> <p style="padding-left: 40px;"><i>b)</i> n'est pas authentique.</p> <p style="text-align: center;">...</p>
Member	Qualité
<p>124. A foreign national is a member of the spouse or common-law partner in Canada class if they</p> <p style="padding-left: 40px;"><i>(a)</i> are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;</p>	<p>124. Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :</p> <p style="padding-left: 40px;"><i>a)</i> il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;</p>

(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.

VII. Standard of review

[16] The question of whether a relationship is genuine or is for the purpose of acquiring a status under the IRPA is a question of fact subject to the reasonableness standard (*Keo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1456 at para 8; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417 at para 14; *Ma v Canada (Minister of Citizenship and Immigration)*, 2010 FC 509 at para 32).

[17] In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the Supreme Court of Canada affirmed that the reasonableness standard "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (at para 47).

VIII. Parties' positions

[18] The applicant claims that the officer drew clearly capricious, arbitrary and unreasonable conclusions, taking into consideration elements that were irrelevant to the assessment of whether the marriage to his wife was genuine, such as his criminal record that indicated he was "single" three months after his wedding, his dishonesty towards the officer regarding unpaid fines and his non-compliance with the Regulations by studying without a permit. The applicant also claims that the officer erred by granting significant weight to the fact his mother could not attend his wedding and by doubting that the couple travelled to Tunisia.

[19] The respondent claims that, considering all the evidence on file, it was reasonable for the officer to conclude that the marriage between the applicant and his wife was essentially to acquire a status or privilege under the IRPA.

IX. Analysis

[20] The case law of this Court has clearly established that there is no particular criterion or even a set of criteria, to determine whether a marriage is genuine pursuant to section 4 of the Regulations (*Ouk, supra; Zheng, supra; Khan, supra*). It is exclusively up to the visa officer to determine the relative weight to grant each of the factors, based on the facts, to ensure the inherent logic of the applicant's story according to the particular clues, or references made by the applicant himself, meaning the encyclopedia of references, a dictionary of terms and a picture gallery of the applicant's file in addition to an assessment to determine whether the facts on file taken together create harmony or discord (*Keo, supra; Zheng, supra*).

[21] In this case, the Court found that it was not unreasonable for the officer to find that the applicant did not meet his obligation to show, on a balance of probabilities, that his marriage was genuine or that he was not essentially aiming to acquire a status or privilege under the IRPA.

[22] Contrary to the applicant's claim, the Court feels that all the factors the officer took into consideration were relevant. It was completely reasonable for the officer to grant significant weight to the civil status noted in the applicant's criminal record, as well as his dishonesty regarding unpaid fines and his non-compliance with the Regulations. Considering the applicant's story was incoherent and contained serious gaps, the Court agrees with the respondent that these were material elements in the application for permanent residence.

[23] It is clear from the decision that the officer considered numerous negative factors (not only those listed above) and came to her decision by finding that these negative factors outweighed the positive factors in the application. The applicant did not show how the officer erred in her analysis.

[24] The Court feels that the evidence on file fully supports the assessment the officer made and justifies her doubts. In fact, with respect, there was very little evidence before her that could have led her to believe that the marriage was authentic.

[25] With regard to the applicant's claims that the officer erred by giving unwarranted weight to the fact his mother could not attend his wedding and doubted that he travelled to Tunisia, the Court feels that these arguments are without merit. Given the lack of documentary evidence on file and the

insufficient explanations given by the applicant and his spouse during their testimony, the Court feels that the officer drew reasonable conclusions on these factors.

[26] As the respondent noted at paragraph 4 of his memorandum, the applicant cannot ask the Court to intervene simply because he does not agree with the officer's assessment of the evidence (*Said v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1245; *Tai v Canada (Minister of Citizenship and Immigration)*, 2011 FC 248 at para 49). It is not the Court's role to reassess the evidence that was before the officer and make a different finding (*Donkor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 141).

[27] Overall, the Court finds the impugned decision belongs to the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir, supra*, at para 47). The officer considered all the evidence and she concluded, properly, that the many inconsistencies in the file were not sufficiently explained and therefore, she could not be sure that the application had been submitted in good faith.

X. Conclusion

[28] For all the above-noted reasons, the applicant's application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the applicant's application for judicial review be dismissed with no question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation
Elizabeth Tan, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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