

Federal Court



Cour fédérale

**Date: 20170606**

**Docket: IMM-2432-16**

**Citation: 2017 FC 550**

**Ottawa, Ontario, June 6, 2017**

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

**BETWEEN:**

**KELROY SONNEL JOHNSON**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Johnson, the Applicant, was denied permanent resident status under the spouse and common-law partner class. After interviewing Mr. Johnson and his spouse on May 24, 2016, the Immigration Officer [Officer] concluded that he failed to satisfy the definition of a spouse under section 124(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

Specifically, the Officer was not satisfied that Mr. Johnson was in a genuine relationship thereby failing to satisfy section 4 of the *IRPR*.

[1] In bringing this Application, Mr. Johnson asks that I declare he meets the requirements for immigration to Canada or in the alternative that I quash the decision and return the matter for redetermination by a different officer. He submits that: (1) the process was procedurally unfair; (2) the Officer ignored material documentary evidence; and (3) the decision is unreasonable.

[2] Having considered the Parties' written and oral submissions this Application can be resolved on the issue of procedural fairness without the need to address the other issues. As set out below, I am satisfied that the process was procedurally unfair, that the unfairness may have impacted upon the decision, and the intervention of this Court is warranted. The Application is granted.

## II. Background

[3] Mr. Johnson is a citizen of St. Vincent and the Grenadines. He arrived in Canada in November 2004 as a visitor, and has remained in Canada since then. He met his spouse on May 1, 2014, and they began to live together on May 30, 2014.

[4] Mr. Johnson proposed to his spouse in September 2014 and they were married in Toronto, Ontario in August 2015. An application for permanent residence under the spouse or common-law partner in Canada class was submitted in September 2015.

[5] On May 24, 2016 at approximately 11:50 a.m. Mr. Johnson received a phone call from the Officer requiring him to attend an interview at the immigration office by 2:00 p.m. that same day. The Officer advised Mr. Johnson that the purpose of the interview was to establish his identity. Mr. Johnson advised he could not be at the office by 2:00 p.m. and the Officer requested that he arrive by 2:30 p.m. The Officer also advised Mr. Johnson his spouse need not attend.

[6] Prior to arriving at the office Mr. Johnson spoke with his spouse and although she was not obliged to attend at the interview she chose to accompany him. The Officer interviewed both Mr. Johnson and his spouse separately and together. The interview resulted in inconsistent answers to a number of questions and it was on this basis that the permanent residence application was refused.

### III. Decision under Review

[7] The Officer's reasons begin by indicating that the interview was convoked for identity purposes and that Mr. Johnson was advised his spouse was not required to attend. The reasons indicate that Mr. Johnson appeared, as instructed, with his spouse, although she was not required, and "[Mr. Johnson] and [his spouse] were interviewed separately and asked the same questions."

[8] The Officer noted a number of discrepancies in the information provided. The Officer indicates serious credibility concerns as it was unclear from the answers given when the couple met and began to cohabit, why many different avenues of application for permanent residence were considered, and why a fingerprint document submitted in support of the spousal sponsorship application was completed on the same date the couple commenced cohabitation.

The Officer also noted inconsistencies relating to whether Mr. Johnson's spouse was working or attending school, the name of his sister and when he retained the services of an immigration consultant. The Officer states, relying on an overall assessment of the documentary evidence and the inconsistencies that "I am not satisfied they are in a genuine relationship". The application was refused.

#### IV. Standard of Review

[9] The standard of review to be applied when addressing questions of procedural fairness is correctness (*Kozak v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124 at para 44). The Court must determine whether the duty to act fairly has been satisfied within the specific context of the matter before the Court (*Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21 [*Baker*]).

#### V. Analysis

[10] Mr. Johnson argues that the Officer acted unfairly. He was advised on short notice that he was required to attend for an interview for the purpose of establishing identity. Despite the notice, the interview was not limited to issues of identity and his spouse was also interviewed. He argues that this was contrary to the Respondent's own procedures that state "Officers should give applicants adequate notice regarding the process or the interview that will result or lead to a decision ... [and] should accurately describe to applicants the documentation they are required to submit in order to address their concern". (Citizenship and Immigration Canada, "Manual – OP 1: Procedure" at section 8 Procedural Fairness (Ottawa: CIC, as it read at the time)). Mr. Johnson

submits the failure to notify him, his spouse or his counsel of the new purpose of the interview or that the interview would lead to a final decision was procedurally unfair.

[11] The Respondent counters that the questions posed by the Officer were basic and routine requiring no time for preparation or consultation. The Respondent submits that the questions posed were not legal in nature and therefore counsel's presence was not required to answer any of the questions posed. The Respondent further submits that in these circumstances the Officer's decision to embark on an interview that included an assessment of the genuine nature of the marriage was in itself adequate notice and by extension that there was no violation of the principles of natural justice. In the alternative, relying on the Supreme Court of Canada's decision in *Canada (Citizenship and Immigration) v Khosa*, (2009 SCC 12 at para 43), the Respondent submits that even if Mr. Johnson was not afforded required procedural safeguards, the error was purely technical and does not merit relief. I cannot agree.

[12] The duty of fairness varies and depends upon an appreciation of the context in which the issue arises (*Baker*, at para 21; *Ha v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49 at para 40).

[13] In *Bushra v Canada (Minister of Citizenship and Immigration)*, (2016 FC 1412 [*Bushra*]), Justice Henry Brown found the applicant had been treated unfairly where a visa officer convoked an interview where much turned on certain humanitarian and compassionate related considerations with no mention of these concerns in notice to the interviewee. Similarly in *Chen v Canada (Minister of Citizenship and Immigration)*, (2008 FC 1227 [*Chen*]), the

applicants argued before Justice Leonard Mandamin that the officer's failure to explain in the notice convoking the interview that questions would turn on the genuineness of marriage was a breach of procedural fairness. Justice Mandamin agreed and further found there to be a higher standard of procedural fairness when s. 4 of the *IRPR* is engaged (*Chen* at para 33). He stated the following at paragraphs 34-35:

[35] The applicants had no notice that the marriage issue was vital to their application for a permanent resident visa. Had the applicants been notified in advance about this issue, the potential for being denied a permanent resident visa, and the consequence of being ruled inadmissible, they could have had the opportunity to obtain additional documents and make focussed submissions to the Officer.

[36] I conclude that the Officer denied the applicants' procedural fairness when, having not given advance notice of the purpose of the examination, she did not afford the applicants the opportunity to supply further documentation and submissions.

[Emphasis added]

[14] In this case Mr. Johnson was told that the interview would address issues related to identity. He was told that his spouse need not come, although she did. He was given just over 2.5 hours' notice that the interview, to address concerns related to identity, would take place. He was not advised of the change in the purpose for the interview, that in changing the purpose of the interview it would be addressing an issue fundamental to his application for permanent residence as a spouse or that the interview would lead to a sudden determinative decision. Considering these facts it is difficult to envisage how the Officer's decision to engage in questions related to s. 4 of the *IRPR* on the spot might be viewed as "adequate notice" as suggested by the Respondent or be procedurally fair in the context of section 4 of the *IRPR* in light of this Court's jurisprudence.

[15] I am also unable to conclude that this error was simply a technical breach not meriting relief. As noted in both *Bushra* and *Chen*, had the applicants in those cases received a notice that adequately reflected the nature of the interview, they may have prepared and acted differently, and submissions may have been more focussed before the Officer (*Bushra*, at para 20; *Chen*, at para 34).

[16] In my view, the reasoning of Justices Brown and Mandamin is applicable to the present application. The Respondent's argument that a number of the inconsistencies arose out of simple and routine questions that should not have required time for consideration or preparation fails to consider the fact that a number of the areas of concern related to a consideration of events that had occurred in the past. Had Mr. Johnson and his spouse received adequate notice explaining that they would be questioned about the genuine nature of their marriage, they may have prepared differently and they may have been better prepared to reconcile their individual memories of the time frames that were of interest to the Officer and make focused submissions about their marriage including the potential of further supporting documentation. One of the reasons for notice is to allow an individual to reflect upon and recall the timelines of past events. In fact, Mr. Johnson argues that a number of the inconsistencies the Officer identified were clarified in further questioning.

[17] Had Mr. Johnson and his spouse been given adequate notice of the nature of the interview their answers may indeed have been more focussed, less confused and the outcome may have been different.

VI. Conclusion

[18] The failure to provide Mr. Johnson adequate notice of the nature and purpose of the interview was procedurally unfair. I am unable to conclude that the breach of fairness was merely technical. The Application is granted and the matter is returned to be redetermined by a different officer.

[19] The Parties did not identify a question of general importance and none arises.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The Application is granted and the matter returned for redetermination by a different decision-maker.
2. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-2432-16

**STYLE OF CAUSE:** KELROY SONNEL JOHNSON v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 29, 2017

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JUNE 6, 2017

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