

Federal Court



Cour fédérale

Date: 20190911

Docket: IMM-5663-18

Citation: 2019 FC 1159

Ottawa, Ontario, September 11, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

NORDETTE LORAIN FRAY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of an Officer [the Officer] of Immigration, Refugees and Citizenship Canada [IRCC], dated November 9, 2018 [the Decision], in which the Officer denied the Applicant permanent residence on the basis that the Officer was not satisfied that she is a member of the spouse or common-law partner in Canada class or that

she met the definition of a common-law partner as defined in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] For the reasons explained in greater detail below, the Applicant's application is dismissed. I find the Decision to be intelligible and within the range of acceptable outcomes, which informs the reasonableness standard applicable to this judicial review. I also find no breach of the principles of procedural fairness in the process leading to the Decision.

II. **Background**

[3] The Applicant, Nordette Loraine Fray, is a 34-year-old citizen of Jamaica. She came to Canada in 2003 and soon thereafter made a refugee claim with her mother and sister. Her mother's claim was accepted, but the claims of Ms. Fray and her sister were rejected. She subsequently applied for a pre-removal risk assessment, which was also rejected. She then failed to report for her scheduled removal in 2010, citing fears for her Canadian-born son, if they were to return to Jamaica.

[4] Ms. Fray met Mr. Stennett Downer in 2011. She asserts that they began living together in a common-law relationship on January 15, 2015, in the home owned by Mr. Downer. In June 2017, Ms. Fray's previous counsel filed a sponsorship application on her behalf, based on her relationship with Mr. Downer, but the application was returned by IRCC for insufficient evidence. Counsel re-submitted the application on October 4, 2017.

[5] On September 5, 2018, IRCC wrote to the Applicant, requesting more evidence demonstrating that she was in a conjugal relationship with Mr. Downer and that they had been cohabiting for at least one year prior to the date of her October 4, 2017 application. The letter provided examples of acceptable documentation. In response, her counsel submitted several documents, including letters from friends and family, photographs of Ms. Fray and Mr. Downer together, and a Chatr (mobile phone) Customer Profile referring to an account in her and Mr. Downer's name at the same address with an activation date of October 12, 2016. She also submitted a letter explaining that she had no record of a joint bank account to submit, because the previous joint bank account she shared with Mr. Downer had become inactive.

[6] On October 4, 2018, IRCC again wrote to Ms. Fray, explaining that, based on the limited evidence provided, the Officer was not satisfied that Ms. Fray and Mr. Downer had been cohabiting in the same residence, in a conjugal relationship, for at least one year prior to filing the application. The letter noted that the Chatr Customer Profile showed the current address on file, but not the address associated with the account when it was opened on October 12, 2016. The letter sought additional evidence and again provided examples of acceptable documentation.

[7] On October 12, 2018, Ms. Fray submitted further documents, including a letter she sent to the Canada Revenue Agency [CRA] on April 16, 2016, asking CRA to change their records to reflect a change in her address (to the address of Mr. Downer's house) and stating that she had been in a common law relationship since 2015. Ms. Fray also included a letter sent by Mr. Downer to CRA on February 14, 2017, stating that he had been living with Ms. Fray since January 2015; a Ontario trillium benefit notice dated July 10, 2017, referencing base year 2016

and addressed to Ms. Fray at the address of Mr. Downer's house; and two undated pages from Ms. Fray's T1 General income tax return for 2015.

[8] On October 25, 2018, Ms. Fray's counsel advised IRCC that the Applicant had submitted the only documentation that had become available to her. On October 29, 2018, IRCC confirmed to her counsel receipt of the recently submitted documentation.

III. **Decision Under Review**

[9] In the Decision dated November 9, 2018, the Officer found that Ms. Fray did not meet the requirements for immigration to Canada, referencing the relevant provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and the Regulations which relate to the spouse or common-law partner in Canada class.

[10] In the Decision, the Officer referred to having reviewed the file, including the additional information submitted, but was not satisfied that Ms. Fray met the definition of common-law partner. The Officer listed the documents submitted, including those submitted in response to the IRCC letters, and concluded that Ms. Fray had not established she had been cohabiting with her sponsor in a conjugal relationship since October 5, 2016 or prior.

[11] Because the Officer was not satisfied that Ms. Fray was a member of the spouse or common-law partner in Canada class, her application for permanent residence was refused.

IV. **Issues and Standard of Review**

[12] The Applicant submits the following issues for consideration by the Court:

- A. Did the Officer ignore evidence in concluding that the Applicant and her sponsor did not live together for at least 12 months in a conjugal relationship?
- B. Did the Officer fail to provide adequate reasons for the Decision?
- C. Did the Officer breach the principles of procedural fairness by failing to hold an interview?
- D. Did the Officer err by failing to share the Officer's concerns with the Applicant?

[13] The Applicant submits, and I concur, that the first two issues articulated above are reviewable on a reasonableness standard, and the latter two issues are reviewable on a correctness standard, as they engage questions of procedural fairness.

V. **Analysis**

- A. ***Did the Officer ignore evidence in concluding that the Applicant and her sponsor did not live together for at least 12 months in a conjugal relationship?***

[14] Ms. Fray submits that the Officer ignored evidence in concluding that she and her sponsor did not live together for at least 12 months in a conjugal relationship. However, her submissions do not identify evidence omitted from the Decision or the related notes in IRCC's

Global Case Management System [GCMS]. Rather, her argument appears to be that, as there was sufficient evidence before the Officer to confirm that Ms. Fray and Mr. Downer lived in a conjugal relationship for at least a year prior to October 4, 2017, the Officer must have ignored this evidence. As the Respondent submits, this argument amounts to a disagreement with the manner in which the Officer assessed the evidence and does not represent a ground for the Court to interfere on judicial review.

B. *Did the Officer fail to provide adequate reasons for the Decision?*

[15] Ms. Fray also argues that the Decision does not demonstrate why the Officer concluded that the evidence she submitted was insufficient. She submits that the Decision simply recites the evidence presented and concludes that it was insufficient, without explaining the reasons that conclusion was reached. While the adequacy of reasons is not a stand-alone basis for quashing a decision, a decision can be unreasonable if it does not disclose how the decision-maker arrived at his or her conclusion (see, e.g., *Chakanyuka v Canada (Citizenship and Immigration)*, 2017 FC 313 at paras 9-10, relying on *Adu v Canada (Citizenship and Immigration)*, 2005 FC 565 at para 14).

[16] I recognize that the Decision does not expressly set out an analysis of the evidence explaining how the Officer arrived at the resulting conclusion. However, a decision maker's reasons are not to be reviewed in a vacuum but are to be considered in the context of the evidence, the parties' submissions, and the process giving rise to the decision (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 18).

[17] The GCMS notes prepared at the time of IRCC's September 5, 2018 and October 4, 2018 letters to Ms. Fray contain parenthetical references, inserted next to many of the pieces of documentary evidence listed by the Officer, identifying the dates of the document. Similar references are inserted in the Decision itself. Also, each of the September 5, 2018 and October 4, 2018 letters explains that the Officer is seeking from Ms. Fray sufficient evidence of cohabitation for at least one year prior to her application and describes the sort of documentation considered acceptable. I agree with the Respondent's submission that the types of documentation the Officer requested can be characterized principally as documentation generated by third parties that would represent independent corroboration of Ms. Fray's assertion that she and Mr. Downer had been cohabiting for the requisite period.

[18] Against that backdrop, the Officer's reasoning is intelligible. The dates of most of the documentation submitted are such that the documents fail to evidence the address at which Ms. Fray resided on October 5, 2016 or earlier. The letter to CRA, advising as to Ms. Fray's change of address, does predate October 5, 2016. However, as noted in the Decision, this document was written by Ms. Fray. Neither that letter nor the letters from family members and friends attesting to her relationship with Mr. Downer (including one letter from Mr. Downer's children dated March 17, 2017, which states that the couple had been living together for over two years) represents the sort of independent third-party confirmation of cohabitation that the Officer had been seeking. Reviewing the Decision in the context of the larger record, it discloses the Officer's reasoning, and there is no basis for a conclusion that the Decision is outside the range of acceptable outcomes. The Decision is therefore reasonable.

C. *Procedural Fairness*

[19] As the Applicant's last two arguments are related, and both involve submissions related to procedural fairness, I will consider them together.

[20] The Applicant observes that the GCMS notes dated September 5, 2018 and October 4, 2018 (both corresponding with the dates of IRCC's letters to Ms. Fray) refer to concerns on the part of the Officer as to whether her relationship with Mr. Downer is genuine. She argues, based on this portion of the record, that the Officer had concerns not only about the dates of the couple's cohabitation, but also about the *bona fides* of the relationship. Those concerns, she claims, may have influenced the outcome of the Decision, such that principles of procedural fairness required the Officer to disclose those concerns to Ms. Fray.

[21] Ms. Fray also submits that concerns of this nature, surrounding the genuineness of the relationship, required the Officer to afford her an interview before making a decision on her application. She relies on jurisprudence identifying the need for an interview where an IRCC officer has doubts as to the genuine nature of information submitted (see, e.g., *Dingba v Canada (Citizenship and Immigration)*, 2018 FC 14 [*Dingba*] at para 17). She also points to IRCC instructions, found on their website and described as "policy, procedures and guidance used by Immigration, Refugees and Citizenship Canada staff" [the IRCC Instructions], which refer to the circumstances that may give rise to interviews with applicants in the spouse or common-law partner class.

[22] The Respondent does not dispute that the GCMS notes demonstrate these concerns. The Respondent acknowledges that, had the Officer been satisfied with the evidence in support of the required period of cohabitation, the Officer would likely have pursued inquiries to assess the *bona fides* of the relationship. However, the Respondent submits that the application did not reach that stage of inquiry and that there is no indication in the record that concerns whether the relationship was *bona fides* influenced the Officer's conclusions surrounding the period of cohabitation. I agree with this characterization of the record and do not find that the Decision was influenced by a concern related to the genuineness of the relationship. In these circumstances, the Officer was not required to disclose these concerns to Ms. Fray or offer her an interview to address same (per the reasoning in *Dingba*).

[23] I also note Ms. Fray's submission that she provided a very detailed personal statement, explaining that she had been living with Mr. Downer since January 2015, and that the evidence before the Officer included sworn statements as to the period of the couple's cohabitation. However, she has identified no case law supporting a requirement for an interview in this context, and the authority relied upon by the Respondent supports the opposite conclusion (see *Nzau v Canada (Citizenship and Immigration)*, 2013 FC 74 at para 13).

[24] Ms. Fray's argument is also unsupported by the IRCC Instructions which provide that, if there is doubt whether an applicant is living with the sponsor, an officer may request additional information or schedule an interview. The potential for an interview is expressed in discretionary, not mandatory, terms. Indeed, the Officer followed up with Ms. Fray on two occasions, seeking additional information to address the doubt whether she and Mr. Downer

were living together. I find no inconsistency between the Officer's approach to this application and the provisions of the IRCC Instructions which would give rise to a procedural fairness concern.

VI. **Conclusion**

[25] Having considered the Applicant's arguments, and finding no reviewable error in the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5663-18

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

No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5663-18

STYLE OF CAUSE: NORDETTE LORAIN FRAY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS SOUTHCOTT, J.

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