

Federal Court



Cour fédérale

Date: 20210610

Docket: IMM-6440-19

Citation: 2021 FC 586

Ottawa, Ontario, June 10, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MUHAMMED JOE YUSUF

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Muhammed Joe Yusuf, is a citizen of Nigeria. He married his spouse in 2004 and three (3) children were born from their union.

[2] In October 2016, the Applicant travelled to Canada for a vacation with his family. During this trip, the Applicant learned that his spouse was homosexual and had a long-term relationship

with another woman. Angry over the news, the Applicant abandoned his family and returned to Nigeria. The Applicant's spouse stayed in Canada with the children and filed for refugee protection, claiming that they would be persecuted in Nigeria because of her sexual orientation. The Refugee Protection Division accepted their claim in February 2017.

[3] The Applicant's spouse submitted an application for permanent residence under the In-Canada Protected Person's class. She included the Applicant in her application as her spouse. During the course of the application, a Migration Officer [Officer] of the High Commission of Canada in Accra, Ghana invited the Applicant to attend an interview.

[4] That same day, following the interview, the Officer refused the Applicant's application for a permanent resident visa as a family member of his spouse. The Officer was not satisfied that the Applicant and his spouse were in a genuine spousal relationship.

[5] The Applicant seeks judicial review of the Officer's decision. He submits that the Officer's conclusion that the marriage is not genuine is unreasonable and that the Officer failed to consider the best interests of the children.

II. Analysis

[6] Both parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]). Where the standard of reasonableness applies, the Court shall examine "the decision actually made by the decision maker, including both the decision maker's reasoning process and the

outcome” (*Vavilov* at para 83). It must ask itself “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[7] The Applicant submits that the five (5) grounds that led to the Officer’s finding that he and his spouse are not in a genuine spousal relationship are unreasonable. He argues that:

- a) the Officer’s finding that there was limited evidence of communication between them overlooks the credible evidence provided, including emails and WhatsApp chats and his statement during the interview that he spoke to his spouse and children “every day”;
- b) it is impossible to know how the Officer arrived at the conclusion that they had no future plans since the Officer did not put any questions to him on this issue;
- c) the Officer’s finding that the Applicant disapproves of his spouse’s sexual orientation overlooks email evidence that he has forgiven her and apologized for the way he treated her;
- d) the Officer’s finding that the Applicant could not explain how his spouse had changed failed to consider the Applicant’s explanation that his spouse had told him she was no longer homosexual, that he believed she would be faithful to him and that they had apologized to each other, a sign they were both interested in their marriage; and

- e) the Officer's questions regarding the Applicant's ability to integrate into Canada and like his spouse, even if he disliked homosexuals, were not reasonable as they failed to understand the culture in Nigeria and the fact that he and his spouse had reconciled.

[8] The Applicant also submits that the Officer failed to consider the best interests of their three (3) children, and that it is in the children's best interests to live as a family with both of their parents. Two (2) of the children are protected persons, who will not be able to travel to Nigeria to visit their father.

[9] The Applicant has failed to persuade me that the Officer's decision is unreasonable.

[10] The Officer's decision is based on the documentation provided by the Applicant, the information in the file and the statements made by the Applicant during his interview. The Officer was not satisfied the Applicant and his spouse were "in an ongoing genuine relationship".

[11] Contrary to the Applicant's argument, the Officer could reasonably conclude the evidence of communication was limited and of limited quality. This evidence consisted of two (2) emails dated April 6 and 19, 2017 and a few sporadic chat conversations on the WhatsApp application from July 2018 and August 2019. When the Officer advised the Applicant that the evidence of communications was limited, the Applicant responded that he speaks to his spouse "on a daily basis because of the children" and that "he talks to the children every day". However,

there is no evidence on the record of any oral communications between the Applicant and his spouse, despite the Applicant being put on notice to bring evidence of his communications with his spouse to the interview. During the hearing, the Applicant argued that there was no record of oral communications because they were conducted over the WhatsApp application, which does not create records akin to telephone statements. While that may be true, the Applicant produced no evidence to support this statement.

[12] I also disagree with the Applicant's argument regarding the Officer's conclusion that the Applicant and his spouse did not have "future plans". The Officer did indeed ask the Applicant what were his long-term plans. His response was that he intended "to integrate into the system [in Canada], maybe going to school so he can take care of them". While the Applicant contends that the Officer should have been more specific in his questions, it was not only reasonable for the Officer to ask open-ended questions but the burden was also on the Applicant to satisfy the Officer that he had such plans with his spouse. It was reasonably open to the Officer to find the Applicant and his spouse did "not appear to have long term plans together".

[13] The Applicant's other three (3) grounds of review are related. The Officer did not overlook the explanations provided by the Applicant but considered them along with other statements made by the Applicant during his interview. For example, the Officer asked the Applicant: "Does your spouse have a lover?" [My emphasis.] The Applicant responded: "Yes she does." [My emphasis.] Later, the Officer asked: "Does your spouse prefer this woman over you?" The Applicant answered: "Yes she does." The Applicant also stated that "his spouse doesn't have affection for him" and that he did not support his spouse's sexual orientation

because it was contrary to his religion and his beliefs and it was illegal in his country. In addition to these statements, the Officer considered the following information:

- i) the Applicant's spouse was forced into their marriage by her parents despite being in a relationship with another woman since high school;
- ii) when the Applicant found out about his spouse's sexual orientation and her relationship with another woman, he left Canada, abandoning his family;
- iii) the Applicant's reconciliation occurred only a few months after his spouse was granted refugee status where she claimed to have received threats from the Applicant and his family because of her sexual orientation; and
- iv) the Applicant's spouse had custody of the children and he did not provide financial support to his family.

[14] While certain questions of the Officer may be construed as based on assumptions, I am not persuaded that they go as far as to taint the overall decision. Furthermore, the Applicant has not raised an argument of, nor demonstrated, bias or a breach of procedural fairness. Upon review of the entire interview, the Officer's questions were focused on establishing whether the Applicant and his spouse were in a genuine spousal relationship and addressed several indicators of such a relationship.

[15] As for the Applicant's argument that the Officer failed to consider the best interests of the children, I am not persuaded that the Officer was required to conduct a "best interests of the children" analysis in determining whether the Applicant and his spouse were in a genuine relationship (*Duyile v Canada (Citizenship and Immigration)*, 2020 FC 485 at para 27). While I

recognize that the presence of children is a factor that can assist the Officer in determining the genuineness of a relationship, the Officer in this case did consider that the Applicant had three (3) children, that he spoke to them every day and that his spouse wanted to protect them from knowing why they are not together.

[16] To conclude, the Applicant has failed to persuade me that the Officer committed a reviewable error in concluding that the Applicant had not met his onus of demonstrating that the marriage was genuine. I am satisfied that, when read holistically and contextually, the Officer's decision meets the reasonableness standard set out in *Vavilov*.

[17] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-6440-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The style of cause is amended to remove the name of the Applicant's spouse from these proceedings;
3. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6440-19

STYLE OF CAUSE: MUHAMMED JOE YUSUF v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 31, 2021

JUDGMENT AND REASONS: ROUSSEL J.

DATED: JUNE 10, 2021

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