Federal Court Cour fédérale

Date: 20241210

Docket: IMM-1836-23

Citation: 2024 FC 2001

Toronto, Ontario, December 10, 2024

PRESENT: Madam Justice Go

BETWEEN:

XIAOXUAN LIU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Xiaoxuan Liu [Applicant], a citizen of China, applied for Permanent Residence [PR] status under the Spouse or Common-Law Partner in Canada [SCLPC] Class in July 2022, with his spouse, Aidi Leng, acting as his sponsor [Sponsor], after the couple became married on June 26, 2022.

[2] An Immigration, Refugees and Citizenship Canada [IRCC] officer [Officer] issued a Procedural Farness Letter [PFL] to the Applicant, in which the Officer noted that since the Applicant and the Sponsor had been cohabiting in a conjugal relationship since December 2020, they became common-law partners in December 2021. The Officer also noted that the Sponsor failed to declare the Applicant in her own PR application and at the time of her landing as a PR, but instead indicated that she was single and did not have any dependants. The Officer thus expressed concerns that the Applicant may be an excluded family member pursuant to paragraph 125(1)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[3] The Applicant responded to the PFL by providing new documents and submissions, stating that he and the Sponsor were not in a conjugal relationship prior to them being married, and that the Applicant and the Sponsor did not meet the definition of common-law partners at the time the Sponsor obtained her PR status.

[4] By a letter dated January 26, 2023, the Officer refused the Applicant's PR application, finding that the Applicant is an excluded family member pursuant to paragraph 125(1)(d) of the *IRPR* [Decision].

[5] The Applicant seeks a judicial review of the Decision. I find the Decision unreasonable as it fell short of the requisite intelligibility, transparency, and justification. I therefore grant the application.

II. Issues and Standard of Review

[6] The Applicant raises the following issues:

a. Did the Officer err in determining that the Applicant and his Sponsor were in a conjugal relationship when the Sponsor obtained her PR status?

b. Were the Applicant's submissions based on a subjective view of their relationship?

c. Was the Officer entitled to rely upon Part C, paragraph 3 of the IMM 5532 form?

d. Did the Officer err by failing to provide adequate reasons?

[7] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

III. Analysis

A. *Relevant legislative provisions and jurisprudence*

[8] Part 7, Division 2 of the *IRPR* prescribes the SCLPC Class. Under paragraph (d) of subsection 125(1) of the *IRPR*, a foreign national is excluded from the SCLPC Class if the sponsor previously made a PR application and became a PR and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

[9] The term "family member" is not defined under Part 7, Division 2 of the *IRPR*.

[10] The Court in *Do v Canada (Citizenship and Immigration)*, 2022 FC 1529 referred to subsection 1(3) of the *IRPR* for the definition of a "family member" under paragraph 125(1)(d). Subsection 1(3) provides that a family member in respect of a person means, among other things, the spouse or common-law partner of the person.

[11] The term "common-law partner" is defined in subsection 1(1) of the *IRPR* to mean, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

[12] The term "conjugal relationship" is not defined in either the *IRPR* or in the *Immigration and Refugee Protection Act*, SC 2001, c. 27. However, as the case law confirms, and the parties agree, the common law test for determining whether or not a couple is in a conjugal relationship, as set out in *M v H*, [1999] 2 SCR 3, 171 DLR (4th) 577 [*M v H*], applies.

[13] At para 59 of *M v H*, the Supreme Court of Canada [SCC] set out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, the SCC also emphasized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal.

[14] Further, as this Court noted in *Ocampo v Canada (Citizenship and Immigration)*, 2019 FC 929 at para 37, the IRCC Operating Procedures indicate "that in considering whether a couple is cohabiting, a number of factors may be considered, including the existence of joint

bank accounts, joint leases, and shared household chore responsibility. However, this analysis should be purposive and contextual, and other evidence may be considered."

[15] The full text of the relevant legislative provisions can be found in Appendix A.

B. *The Officer's finding that the Applicant and the Sponsor were in a common-law relationship as of December 2021 was unreasonable*

[16] The Applicant makes several arguments challenging the reasonableness of the Decision. I need not address all the arguments. I find the Officer's determination that the Applicant and the Sponsor were in a common-law relationship as of December 2021 was unreasonable for the following reasons. First, the Officer's finding that a conjugal relationship existed rests almost exclusively upon their determination that the couple shared a shelter. Second, the Officer's reasons were inadequate.

[17] The Officer's reasons were included in the Global Case Management System [GCMS] notes. Two particular entries—one dated November 21, 2022 when the PFL was issued, and another dated January 26, 2023 after the Officer received the Applicant's response to the PFL—are of particular relevance to this application.

[18] In the November 21, 2022 GCMS notes entry, the Officer set out some of the basic facts concerning the Applicant's PR application. The Officer also highlighted some of the information and documents the Applicant provided. The Officer's analysis was included in the following part of the GCMS notes:

> - IMM5532 indicates sponsor residing at Westminster from 2018/08 t [*sic*] 2022/06 and at Delson Way [*sic*] from 2022/06 to 2022/07 (application lock-in). Also confirms cohabitation in China prior and in Canada as outlined.
> - Schedule A indicates PA residing on Westminster from 2020/12 to 2022/06 and 2022/06 to 2022/07 (lock in) at Delsom Way.
> - Joint lease agreement signed 2021/12/15 for start date of 2022/01/01 (Westminster) & 2017 in China.
> - IMM5562 – no mention of spouse.
> - TD account doc indicating joint account opened 2021/05/27 (and additional statements from 2022); Letters of support (no firm dates except house purchase confirmed by realtor March 15 2022). Representative letter outlines that PA & SPR resided together in December 2017 to August 2018 in China and then since December 2020 in Canada (2020/12 to 2022/06 on Westminster and 2022/06 to present at Delsom).
>
> I am satisfied that the applicant and sponsor met the definition of a conjugal relationship prior to the Sponsor's landing. The couple demonstrate that beyond probabilities they shared sleeping arrangements, personal behaviour, shared services, shared social activities, economic support, and social perception was the two were a couple.
>
> SPR failed to declare PA as their spouse to immigration at time of their application for permanent residence or their landing.
>
> PA is an excluded family member as per R 125(1)(d)
>
> [emphasis added]

[19] In the January 26, 2023 entry of the GCMS notes, the Officer provided a brief summary of the Applicant's response to the PFL, and then stated that having reviewed all the information available from original submission to response to the PFL, the Officer was still not satisfied that the Sponsor has not failed to declare the Applicant. The Officer then concluded that the Applicant was an excluded family member.

[20] These reasons confirm that the Officer focused their analysis almost exclusively on only one factor outlined in *M v H*, namely that the Applicant and the Sponsor shared a shelter over different periods in China and in Canada.

[21] While the Officer mentioned some other factors listed in *M v H,* they did so only in the concluding paragraph of the November 21, 2022 entry. Further, the GCMS notes reveal that the Officer conducted no analysis whatsoever of almost all of these other factors. Nor did the Officer refer to any of the Applicant's evidence in regards to many of these factors.

[22] For instance, the Officer concluded without explaining why the couple's "personal behaviour" demonstrates that the Applicant and the Sponsor were in a conjugal relationship. The Officer noted "shared services" without explaining what they were. Indeed, as the Applicant points out, there was no evidence of any "shared services" before the Officer. In addition, when referencing the "house purchase" and the "joint lease agreement," the Officer failed to mention that the house was purchased in the Sponsor's sole name, and that while the couple signed a joint lease, this lease was not effective until January 2022 and they had no joint lease prior to this date.

[23] As the Applicant submits, and I agree, adequate reasons show a grasp of the issues raised by the evidence, allow the individual to understand why the decision was made, and allow the reviewing court to assess the validity of the decision. Reasons for decisions are adequate when they are clear, precise, and intelligible, and when they state why the decision was reached. While an officer's reasons can be brief, they must inform the applicant of the underlying rationale for the decision: *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 176 at paras 20-21, citing *Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323, 386 FTR 1 at para 17.

[24] In this case, the Applicant made submissions and provided evidence to the Officer highlighting that while he and the Sponsor shared a shelter, they were not in a conjugal

relationship. The Applicant cited, among other facts, that he and the Sponsor were not committed to a permanent spousal relationship until they were married; they were not perceived as spouses by either the community or their families; they have no children; and they did not share finances nor did they support one another. While the Officer was entitled to weigh the evidence and reached a conclusion based on their assessment, the Officer's failure to engage with the Applicant's evidence and provide any explanation of how the evidence was assessed under the *M v H* analysis rendered the reasons inadequate.

[25] The above-noted errors are sufficient grounds to set aside the Decision. Strictly as an *obiter*, however, I wish to comment on the Applicant's concerns about the questions posed in paragraph 3 in Part C of IMM5532. The questions in paragraph 3 ask:

> a) "How long have you been cohabiting (living together)?"
>
> b) "Give the period(s) you have been living together after your conjugal relationship started."

[26] While question b) goes on to specify that "conjugal relationship" means "a committed and mutually interdependent relationship of some permanence where a couple has combined their affairs to the extent possible (marriage-like)," I agree with the Applicant that there is a disconnection between question a) and b).

[27] Specifically, question a) does not ask "How long have you been cohabiting (living together) in a conjugal relationship?" Rather, that question simply asks a couple to state how long they have physically resided together. The Applicant maintains that the couple correctly answered that they have physically cohabited since December 2020.

[28] Whether or not the Applicant in this case did provide a correct answer lies beyond my scope of review. I simply observe that the disconnect between part a) and b) in paragraph 3 may mislead an applicant, especially one who does not appreciate the important nuance between cohabiting and cohabiting in a conjugal relationship, to provide a start date of cohabitation, without realizing that their answer may be construed as being the start of their conjugal relationship as well.

IV. Conclusion

[29] The application for judicial review is granted.

[30] There is no question for certification.

JUDGMENT in IMM-1836-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

APPENDIX A

***Immigration and Refugee Protection Regulations* (SOR/2002-227)**
***Règlement sur l'immigration et la protection des réfugiés* (DORS/2002-227)**

PART 1 **Interpretation and Application** **DIVISION 1** **Interpretation** **Definitions** **1(1)** The definitions in this subsection apply in the Act and in these Regulations. ***common-law partner*** means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*) […] **Definition of *family member*** **(3)** For the purposes of the Act, other than section 12 and paragraph 38(2)(d), and for the purposes of these Regulations, other than paragraph 7.1(3)(a) and sections 159.1 and 159.5, ***family member*** in respect of a person means **(a)** the spouse or common-law partner of the person; **(b)** a dependent child of the person or of the person's spouse or common-law partner; and **(c)** a dependent child of a dependent child referred to in paragraph (b).	**PARTIE 1** **Définitions et champ d'application** **SECTION 1** **Définitions et interprétation** **Définitions** **1(1)** Les définitions qui suivent s'appliquent à la Loi et au présent règlement. ***conjoint de fait*** Personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*) […] **Définition de *membre de la famille*** **(3)** Pour l'application de la Loi – exception faite de l'article 12 et de l'alinéa 38(2)d) – et du présent règlement – exception faite de l'alinéa 7.1(3)a) et des articles 159.1 et 159.5 –, ***membre de la famille***, à l'égard d'une personne, s'entend de : **a)** son époux ou conjoint de fait; **b)** tout enfant qui est à sa charge ou à la charge de son époux ou conjoint de fait; **c)** l'enfant à charge d'un enfant à charge visé à l'alinéa b).
PART 7 **Family Classes** […] **DIVISION 2** **Spouse or Common-Law Partner in Canada Class**	**PARTIE 7** **Regroupements familiaux** […] **SECTION 2** **Époux ou conjoints de fait au Canada**

[…]

Excluded relationships

125(1) A foreign national shall not be considered a member of the spouse or common-law partner in Canada class by virtue of their relationship to the sponsor if

(**a**) Repealed, SOR/2023-249, s. 7]
(b) the foreign national is the sponsor’s spouse or common-law partner, the sponsor has an existing sponsorship undertaking in respect of a spouse or common-law partner and the period referred to in subsection 132(1) in respect of that undertaking has not ended;
(c) the foreign national is the sponsor’s spouse and
(i) the sponsor or the spouse was, at the time of their marriage, the spouse of another person, or
(ii) the sponsor has lived separate and apart from the foreign national for at elast one year and
(A) the sponsor is the common-law partner of another person or the sponsor has a conjugal partner, or
(B) the foreign national is the common-law partner of another person or the conjugal partner of another sponsor;
(c.1) the foreign national is the sponsor’s spouse and if at the time the marriage ceremony was conducted either one or both of the spouses were not physically present unless the foreign national was married to a person who was not physically present at the ceremony as a result of their service as a member of the Canadian Forces and the marriage is valid both under the laws of the jurisdiction where it took place and under Canadian law; or
(d) subject to subsection (2), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-

[…]

Restrictions

125(1) Ne sont pas considérées comme appartenant à la catégorie des époux ou conjoints de fait au Canada du fait de leur relation avec le répondant les personnes suivantes :

a) [Abrogé, DORS/2023-249, art. 7]
b) l’époux ou le conjoint de fait du répondant, si celui-ci a déjà pris un engagement de parrainage à l’égard d’un époux ou conjoint de fait et que la période prévue au paragraphe 132(1) à l’égard de cet engagement n’a pas pris fin;
c) l’époux du répondant, si, selon le cas :
(i) le répondant ou cet époux était, au moment de leur mariage, l’époux d’un tiers,
(ii) le répondant a vécu séparément de cet époux pendant au moins un an et, selon le cas :
(A) le répondant est le conjoint de fait d’une autre personne ou il a un partenaire conjugal,
(B) cet époux est le conjoint de fait d’une autre personne ou le partenaire conjugal d’un autre répondant;
c.1) l’époux du répondant si le mariage a été célébré alors qu’au moins l’un des époux n’était pas physiquement présent, à moins qu’il ne s’agisse du mariage d’un membre des Forces canadiennes, que ce dernier ne soit pas physiquement présent à la cérémonie en raison de son service militaire dans les Forces canadiennes et que le mariage ne soit valide à la fois selon les lois du lieu où il a été contracté et le droit canadien;
d) sous réserve du paragraphe (2), dans le cas où le répondant est devenu résident permanent à la suite d’une demande à cet effet, l’étranger qui, à l’époque où cette demande a été faite, était un membre de la

accompanying family member of the sponsor and was not examined.	famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'une contrôle.
Exception	**Exception**
(2) Subject to subsection (3), paragraph (1)(d) does not apply in respect of a foreign national referred to in that paragraph who was not examined because an officer determined that they were not required by the Act or the former Act, as applicable, to be examined.	**(2)** Sous réserve du paragraphe (3), l'alinéa (1)d) ne s'applique pas à l'étranger qui y est visé et qui n'a pas fait l'objet d'un contrôle parce qu'un agent a décidé que le contrôle n'était pas exigé par la Loi ou l'ancienne loi, selon le cas.
Application of par. (1)(d)	**Application de l'alinéa (1)d)**
(3) Paragraph (1)(d) applies in respect of a foreign national referred to in subsection (2) if an officer determines that, at the time of the application referred to in that paragraph,	**(3)** L'alinéa (1)d) s'applique à l'étranger visé au paragraphe (2) si un agent arrive à la conclusion que, à l'époque où la demande visée à cet alinéa a été faite :
(a) the sponsor was informed that the foreign national could be examined and the sponsor was able to make the foreign national available for examination but did not do so or the foreign national did not appear for examination; or **(b)** the foreign national was the sponsor's spouse, was living separate and apart from the sponsor and was not examined.	**a)** ou bien le répondant a été informé que l'étranger pouvait faire l'objet d'un contrôle et il pouvait faire en sorte que ce dernier soit disponible, mais il ne l'a pas fait, ou l'étranger ne s'est pas présenté au contrôle; **b)** ou bien l'étranger était l'époux du répondant, vivait séparément de lui et n'a pas fait l'objet d'un contrôle.
Definition of *former Act*	**Définition de *ancienne loi***
(4) In subsection (2), ***former Act*** has the same meaning as in section 187 of the Act.	**(4)** Au paragraphe (2), ***ancienne loi*** s'entend au sens de l'article 187 de la Loi.

FEDERAL COURT

SOLICITORS OF RECORD

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