Federal Court  Cour fédérale

Date: 20100222

Docket: IMM-2617-09

Citation: 2010 FC 190

Ottawa, Ontario, February 22, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

HAMAWATTIE MANBODH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision by an immigration officer (the officer) at Citizenship and Immigration Canada dated April 17, 2009, wherein the officer rejected the applicant's application for permanent residence under the spouse of common-law partner in Canada class.

Factual Background

[2] The applicant is a citizen of Guyana who came to Canada on August 22, 2001 with her own valid Guyanese passport. After her arrival, the applicant went to her sister Madhumattie Hardiyal's home and she remained with her sister until she filed a refugee claim on September 19, 2002.

[3] After filing her claim, the applicant obtained a work permit. She has worked for various employers since that time. She currently works for a window and door manufacturing company.

[4] The applicant met her spouse, Bobby Allard, in March 2005. The couple states the common-law relationship commenced shortly thereafter. The couple rents a room and live upstairs at the applicant's sister's home.

[5] The applicant states that neither her spouse nor herself have been previously married and neither one of them have children. The applicant and her spouse plan to marry in the summer of 2010.

Impugned Decision

[6] In order to qualify to become a member of the spouse or common-law partner in Canada class, paragraph 124(*a*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) requires the applicant to demonstrate she is "the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada". The officer found that the couple's common-

law union does not appear to be genuine. The officer concluded it had not been established the couple was living together.

Respondent's Arguments

[7] The respondent submits the determination of questions of fact is at the heart of an officer's jurisdiction. The Supreme Court of Canada recently confirmed that factual findings made by tribunals are owed considerable deference and reviewing courts cannot substitute their own appreciation of the appropriate solution.

[8] This Court has found that an officer has well-established expertise in the determination of questions of fact. Moreover, it has been recognized and confirmed that, with respect to assessment of evidence, the Court may not substitute its decision for that of the officer, when the applicant has failed to prove that the officer's decision was based on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.); *Grewal v. Canada (Minister of Employment and Immigration)*, [1983] F.C.J. No. 129 (QL) (F.C.A.)).

Analysis

[9] The applicable standard of review in the case at bar for a finding, pursuant to paragraph 124(*a*) of the Regulations in determining whether there was sufficient evidence to prove the

applicant cohabited with her sponsor in Canada, is the newly-minted standard of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[10] The relevant provision of the Regulations is the following:

124. A foreign national is a member of the spouse or common-law partner in Canada class if they	**124.** Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :
(*a*) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;	*a*) il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;
(*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.

[11] Failure to meet one of the above-mentioned conditions is fatal to the applicant's application for permanent residence. Essentially, the applicant is asking this Court to consider the concerns raised by the officer and the explanations provided by the applicant in reply and to reweigh those explanations and arrive at a different conclusion, which is not the role of this Court.

[12] The applicant states that the Board erred in law because it misconstrued the evidence.

[13] Having carefully considered the decision of the officer, the Court cannot conclude that the officer based his decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the evidence before it.

[14] The officer's decision was not based primarily on the applicant's failure to produce a particular document such as a joint telephone, rent or utility receipt. Rather, the officer concluded there was insufficient credible evidence proving joint residency.

[15] The particular living arrangements of the applicant and her sponsor were considered by the officer. However, the lack of evidence of cohabitation, coupled with the applicant's apparent lack of knowledge about her sponsor's employment and whereabouts, led the officer to reasonably believe the common-law relationship was not genuine and the couple was not cohabitating. More particularly, the applicant was unable to provide accurate employment details about her spouse. When the officer called the couple at home on April 17, 2009, he asked the applicant to speak with Bobby Allard. The applicant said he had started working at Canstaff as a forklift operator two days ago. The applicant gave the officer a phone number to call Canstaff but the number was the applicant's immigration consultant. The officer called the applicant again and she gave him the phone number for Canstaff. When the officer contacted Canstaff, the dispatcher told the officer there was no Bobby Allard working there as a forklift driver and he adduced the company had not hired anyone in months because of recession.

[16] In my view, the applicant failed to provide valid evidence that this Court should intervene. It was not unreasonable for the officer to conclude that cohabitation for the purposes of the Regulations at para. 124 had not been established. The Court finds that the outcome falls within a range of possible, acceptable outcomes which are defensible in fact and in law (*Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at par. 45-46, 49).

[17] For the above reasons, this application for judicial review is dismissed. No issue is raised for certification purposes and this case does not contain any.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Richard Boivin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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