Federal Court  Cour fédérale

Date: 20131025

Docket: IMM-9464-12

Citation: 2013 FC 1091

Ottawa, Ontario, October 25, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SHU XING LI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is a judicial review of an Immigration Officer's [Officer] decision denying a permanent residence [spousal class] application. The Officer found that the Applicant had failed to establish that the relationship (marriage) with the sponsor was genuine.

II. BACKGROUND

[2] The Applicant came to Canada in 2008. His refugee claim was dismissed and leave for judicial review was likewise dismissed. He then married his sponsor whom he claimed to have known since a teenager in China.

[3] The crux of the case is what transpired at the interview with the Officer in April 2012. Counsel was not present and there was no transcript. However, a Cantonese interpreter was at the interview and the Officer made notes. The notes were submitted with the Officer's reasons for denial.

[4] The Applicant complained, in this Court, that the Officer was rude and aggressive. The allegation outlines a number of offensive comments – "Why don't you speak English if you are Canadian?"; "You are so useless here" – and similar type comments.

[5] The Officer flatly denies that any such statements were made.

[6] The Officer denied the application because she was not satisfied that the Applicant and his sponsor were cohabiting or that their relationship was genuine. The facts which gave rise to the concerns were:

- the absence of rental evidence;
- the mutual lack of clarity about where they lived despite allegedly living there from 2008 for the Applicant and 2010 for the sponsor;

- the inability of the landlord to recognize the sponsor and the landlord's statement that the Applicant had moved out in 2010;
- the inability to recall the address they said they intended to move to and their conflicting stories of why they did not eventually move;
- the photos submitted as to the relationship appeared staged, unnatural and banal;
- the inability to name the individuals who took the pictures;
- the discrepancies between them on when they moved in together, and whether the Applicant had asked the sponsor's ex-husband for permission to marry the sponsor; and
- the sponsor's mother still lives with the sponsor's ex-husband, the sponsor pays household bills under her ex-husband's name and the ex-husband's car was seen at the couple's stated residence.

III. ANALYSIS

[7] The Applicant raises (a) reasonable apprehension of bias, and (b) unreasonableness of the decision. The first issue is reviewed on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339) and the second on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[8] On the bias issue, this is a classic "he said, she said" situation. The burden of proof is on the Applicant. It is a serious allegation.

[9] However, the Applicant put in no evidence to corroborate the allegation. It is striking that there was no evidence from the translator. There was also no evidence from the landlord.

[10] This is an issue of credibility. Resolution of this type of credibility issue is well described in *Faryna v Chorney*, [1952] 2 DLR 354, 1951 CarswellBC 133:

> … the real test of the truth of a witness in such a case must be the harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[11] In the absence of better proof, I cannot accept the Applicant's allegation. Corroborative evidence was not submitted nor was there any explanation for its absence. It is reasonable to conclude that such evidence does not exist.

[12] There is no need for extensive consideration of the law on bias because the Applicant cannot make out the factual basis for the allegation.

[13] As to the merits of the decision, this is a fact-driven exercise. The Court accords deference to this type of decision. A review of the record discloses that the conclusions were fairly open to the Officer – indeed they are virtually inescapable.

IV. CONCLUSION

[14] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

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

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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