Federal Court Cour fédérale

Date: 20131219

Docket: IMM-1814-13

Citation: 2013 FC 1269

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, December 19, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

CEDRIC JOHAN OSSETE NGOUABI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), that seeks to set aside the decision of February 14, 2013, in which an immigration officer of Citizenship and Immigration Canada (CIC) dismissed the

application for permanent residence (APR) sponsored by the applicant as a member of the spouse or common-law partner in Canada class.

II. Facts

[2] The applicant is a citizen of the Democratic Republic of Congo.

[3] He arrived in Canada in June 2008 and filed a refugee claim, which was rejected in December 2011. The applicant sought the judicial review of this negative decision, but his application was also dismissed on March 21, 2012.

[4] On June 27, 2012, the applicant filed an application for permanent residence as a member of the spouse or common-law partner in Canada class. This application was sponsored by Simane Moussa, his guarantor, who became his spouse on November 25, 2011.

[5] On February 14, 2013, the immigration officer met the applicant and his spouse and interviewed them for the purpose of verifying the genuineness of their relationship.

[6] On February 21, 2013, the immigration officer dismissed the APR by indicating that she was not convinced of the genuineness of the marriage. This is the decision under judicial review.

III. Impugned decision

[7] The decision dismissing the APR was signed on February 14, 2013, but was sent to the applicant on February 21, 2013. It is composed of two separate documents: a letter summarizing the decision and an interview record from February 14, 2013.

[8] In the letter, the immigration officer recalled the legislative framework applicable to the applicant's APR and found that she was not persuaded that the marriage was genuine and was not entered into merely for the purpose of acquiring any status or privilege under the IRPA.

[9] The interview record of February 14 repeated the questions asked to the applicant and his spouse and stated their answers. In the record, the immigration officer specified that she confronted the applicant and his spouse regarding the inconsistencies in their answers but she concluded that she was not persuaded by their explanations. Therefore, she rejected the applicant's APR, relying primarily on the following four inconsistencies, drawn from all the discrepancies identified during the interview:

1. The applicant stated that he was an orphan, while his spouse stated that he regularly spoke to his mother on the telephone. The applicant explained that it was his aunt who he calls "mother".

2. The applicant stated that his father was murdered, while his spouse stated that he died of cancer.

3. The applicant stated that they lived in a 2½ bedroom apartment, while his spouse stated that they lived in a 4½ bedroom apartment. The applicant explained that the rooms were small and for him it was a 2½ bedroom apartment.

4. The applicant stated that his spouse worked in a second-hand clothing store, while she stated that she worked in a brand-name clothing warehouse.

IV. Arguments of the applicant

[10] The immigration officer did not respect the established case law tests for the determination of a conjugal relationship and a genuine marriage. The immigration officer should have shown flexibility in her assessment of the couple's genuineness. Further, the decision was based on conjecture and the four alleged inconsistencies on which the decision relies relate to elements that are not relevant or fundamental to the point of calling into question the genuineness of their marriage.

[11] Throughout the interview, the applicant and his spouse proved that they lived every day together and that they share a true love. They provide mutual assistance to each other, they are interdependent financially, they have an exclusive sexual relationship and they show a permanent desire to live together. However, the immigration officer gives no weight to these positive elements.

V. Arguments of the respondent

[12] The numerous inconsistencies raised during the interview do not relate to the mundane aspects of the life of the applicant and his spouse, but rather on the important elements of their family life and living together. Among other things, the fate of a spouse's parents is not an insignificant element, especially considering that the applicant filed his original refugee claim on the ground that his father was murdered.

[13] Case law has established that the lack of knowledge of the respective families may be considered in the assessment of the genuineness of a marriage without it being a microscopic analysis.

[14] Finally, in his memorandum, the applicant only expressed his disagreement with the decision relating to him. However, it was up to the immigration officer to make this decision since it was she who had the expertise required to decide the factual question of the genuineness of a marriage and who questioned the applicant and his spouse. Thus, as the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law, this Court's intervention is not justified.

VI. Issue

[15] The parties raised substantially the same issue: is the immigration officer's decision dismissal of the applicant's APR as a member of the spouse or common-law partner in Canada class reasonable?

VII. Standard of review

[16] An immigration officer's findings of fact with respect to the genuineness of a marriage must be reviewed on a standard of reasonableness and require deference (see *Corona v Canada (Minister of Citizenship and Immigration)*, 2012 FC 174, at para 13, [2012] FCJ No 200 and *Chimnere v Canada (Minister of Citizenship and Immigration)*, 2012 FC 691, at para 9, [2012] FCJ No 658).

[17] Therefore, this Court will only intervene if the principles of justification, transparency and intelligibility are not respected, i.e. if the decision does not fall within "a range of possible, acceptable outcomes defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47, [2008] 1 SCR 190).

VIII. Analysis

[18] The immigration officer's decision dismissing the applicant's APR as member of the spouse or common-law partner in Canada class is reasonable for the reasons stated below. However, before undertaking an analysis of the issue, it is appropriate to offer a brief summary of the legislative context surrounding such a request.

[19] Subsection 12(1) of the IRPA states how foreign nationals are chosen for family reunification procedures:

Immigration and Refugee Protection Act, SC 2001, c 27	*Immigration and Refugee Protection Act*, LC 2001, ch 27
Family reunification	Regroupement familial
12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.	**12. (1)** La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.
[Emphasis mine.]	[Non souligné dans l'original.]

[20] Therefore, to verify whether a person qualifies as a common-law partner, reference must be made to section 124 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR):

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

Member	Qualité
124. A foreign national is a member of the spouse or common-law partner in Canada class if they	**124.** Fait partie de la the spouse or common-law partner in Canada class 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.

[21] As the respondent pointed out in his memorandum of fact and law, the above section must be read in the context of subsection 4(1) of the IRPR, which refers to bad faith:

Immigration and Refugee Protection Regulations, SOR/2002-227	*Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227
Bad faith	Mauvaise foi
4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**4. (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	*a*) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

(b) is not genuine.	*b*) n'est pas authentique.

[22] In addition, it is important to remember that the burden was on the applicant to persuade the immigration officer of the genuineness of his marriage with his spouse (*Chimnere v Canada* (*Minister of Citizenship and Immigration*), 2012 FC 691, at para 17, [2012] FCJ No 658).

[23] It was thus in this legal context that the immigration officer assessed the applicant's APR as a member of the spouse or common-law partner in Canada class.

[24] The interview of February 14, 2013, revealed a number of inconsistencies some of which are very significant when assessing the daily life of a couple. The inconsistencies reported by the immigration officer in the conclusion of her record are perfectly relevant and relate directly to the married life of the applicant and his spouse and I am of the view that it was perfectly reasonable for the immigration officer to have given them so much weight. Indeed, it is reasonable to think that married people who have lived together for a few years should know where their spouse works and what their job is and they should also know whether their spouse's mother has died or not and whether their spouse's father died as a result of murder or cancer. In addition, contrary to what the applicant claims, the fact that he and his spouse did not give the same answer about the size of their apartment is far from mundane since it is in this home that they allegedly share their life together. Surely, it was reasonable for the immigration officer to doubt the genuineness of the couple because of such inconsistencies.

[25] Further, the interview record of February 14, 2013, reveals that the applicant and his spouse gave inconsistent answers on other elements: the number of guests at their wedding (he said

15 people, she said 5), the identity of the person who proposed (each one stated that they proposed to the other), the number of children that each one wants (he stated that he wants two children and his spouse only wants a daughter, she said that she wants five children, but that the applicant only wants a boy) and the arrival of the applicant in Canada (he stated that he arrived in 2008, she said that he arrived in 2004 or 2005).

[26] The marriage celebration is no doubt an important element in the life of a married couple and the difference between the two answers in this case is marked. In other words, a difference of 10 guests in the count of a wedding with 150 guests is less significant that one with 15 guests. The issue of who proposed is also significant enough in the life of a couple to give it weight. The number of children that the spouses wish to have is also part of the fundamental issues in the daily life of a couple and of their long-term vision of life. As for the year that the applicant arrived in Canada, it is reasonable to believe that the officer could have been of the view that it is a significant enough element in the applicant's life—and in his original refugee claim—to expect that his spouse would know it. In sum, all these discrepancies, which are added to the inconsistencies noted above, certainly influenced the immigration officer in her decision.

[27] The interview lasted nearly three hours and it reveals at least eight significant inconsistencies or discrepancies between the answers given by the each member of the couple. In such a situation, a reviewing court must assess the work of the immigration officer with deference.

[28] Therefore, I am of the view that it was open to the immigration officer to dismiss the applicant's APR as a member of the spouse or common-law partner in Canada class for the reason that his marriage to his spouse was not genuine under subsection 4(1) of the IRPA and I find that

this decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir*, above, at para 47). Therefore, the decision is reasonable and the intervention of this Court is not justified.

[29] The parties were invited to submit a question for certification, but none was submitted.

ORDER

THE COURT ORDERS that this application for judicial review be dismissed. There is no question to be certified.

"Simon Noël"

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1814-13
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