

Federal Court



Cour fédérale

Date: 20150324

Docket: IMM-7102-13

Citation: 2015 FC 370

Ottawa, Ontario, March 24, 2015

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

MONG AH SHADOW LAI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] seeking to set aside an October 22, 2013 decision by an Immigration Officer [the Officer] rejecting the Applicant's application for permanent residence in the spousal category. The Officer found that the Applicant had not met the requirements of section 4 and subsection 124(a) of the *Immigration and Refugee Protection*

Regulations, SOR/2002-227 [the Regulations], because she had not established that she was in a genuine relationship that was not entered into primarily for immigration purposes.

[2] For the reasons that follow, this application is dismissed.

I. Facts

[3] The Applicant is a citizen of China (Hong Kong). She first entered Canada in 2006 on a tourist visa. She alleges she met her current husband, Hua Li Ye [the sponsor], through her landlord in 2009.

[4] She married the sponsor on March 30, 2010, and submitted an in-Canada Spousal Sponsorship Application on August 15, 2010. This application was denied on March 28, 2012, but Justice O’Keefe allowed the judicial review on May 29, 2013, based on a procedural fairness breach. At the interview, the Officer raised the concern that their common residence (at 131 Dawes Road) was also known to be a bawdy house. When the Applicant responded that they lived in the basement, the Officer asked if they had any supporting documentary evidence and they were not able to provide any. The Officer rejected the application without giving the Applicant the opportunity to produce evidence after the interview. Justice O’Keefe found that this violated procedural fairness and quashed the decision on that basis.

[5] The Applicant and her husband moved to Markham in July 2013.

[6] Upon re-determination, the application was denied again on October 22, 2013 after an interview was held on October 15, 2013.

II. The impugned decision

[7] The Officer found that the Applicant had failed to demonstrate that she is in a *bona fide* relationship not entered into primarily for immigration purposes.

[8] The Officer noted that the first application had been quashed on the Officer's failure to consider documentation showing that the Applicant and her sponsor resided in the basement of the alleged bawdy house. An additional CBSA investigation from June 2013 was inconclusive, and as a result, the Officer did not consider that investigation.

[9] The Officer listed the documents on file and those submitted at the October 2013 interview. The Officer noted that there was very little information to substantiate the spouse's cohabitation at their new address on Rowe Court in Markham.

[10] The Officer also noted several discrepancies in the answers provided by the Applicant and her sponsor at the interview. The Officer gave the following examples:

- **Rent and work:** There were discrepancies as to how the Applicant paid her rent from 2006-2009, before the marriage, and whether the Applicant worked from 2009-2013. The Applicant said she did not pay any rent to her landlord before her spouse moved in with her in 2009, but that after he moved in, he paid \$650 per month in rent. Prior to 2009, she provided cleaning services for her landlord in

exchange for free rent; after 2009, she continued to work for her landlord, and the landlord paid her for her work after her husband began paying rent. However, the sponsor said that before he moved in, the Applicant paid rent with help from friends in Hong Kong. He said his wife only worked for the landlord in 2011. When confronted with this discrepancy, the Applicant said she had worked starting in 2006 until 2013, but did not want to tell her husband. When asked how her husband did not notice she was working for the landlord after they were married, the Applicant explained she did not work as regularly as before.

- **Tuesday before interview (October 8, 2013):** There were discrepancies as to what the sponsor did the Tuesday before the interview. The Applicant first said that her husband had the day off, and they stayed home all day. By contrast, the sponsor said he went to see his children from a previous marriage for an hour or two. When confronted, the Applicant said her husband may have left the house while she was sleeping or when she did not notice. The sponsor said he seldom talks to his wife about his children because he does not want her to feel unhappy.
- **Bawdy house at 131 Dawes:** The spouses gave different answers about when they learned that the house at 131 Dawes was an alleged bawdy house and why they moved out. The Applicant says she found out it was a bawdy house at the previous interview in 2012. She said she felt safe there but her husband felt it was dangerous for her to be alone there during the day. By contrast, the sponsor said he felt the house was safe; they moved out simply for pricing and location reasons. He said he did not believe it was a bawdy house at all, he believed it was merely a massage parlour. When asked to explain the discrepancy, the Applicant

said that even though her husband thought it was merely a massage parlour, he felt it was not good for his wife to be home alone during the day.

[11] The Officer also commented on the parties' demeanour at the interview. The Applicant often changed her answers to accommodate what her spouse had said. When confronted on discrepancies, the sponsor would look downwards and not communicate with his wife. The Officer found this "atypical for a person with a vested interest in their spouse's permanent residency application".

[12] Additionally, the Officer was not satisfied the Applicant and her sponsor gave reasonable explanations regarding the differences in their answers. The Officer found it unreasonable that the sponsor would not tell his wife when he was going to visit his children, nor that his wife would not notice he was gone. She also did not find it credible that the sponsor would not know their residence at 131 Dawes was a bawdy house, particularly since this fact was brought up at the previous interview, and because the Applicant had said her husband felt it was dangerous.

[13] Based on the above, the Officer was not satisfied the Applicant and her sponsor are in a *bona fide* relationship not entered into primarily for immigration purposes.

III. Issue

[14] The only issue to be decided in this application is whether the Officer's decision was reasonable.

IV. Analysis

[15] The standard of review is uncontroversial and agreed upon by the parties: the Officer's determination as to whether a relationship is genuine or entered into for the purpose of obtaining status is largely factual in nature and is therefore reviewable against the reasonableness standard (*Singh v Canada (Citizenship and Immigration)*, 2012 FC 23, at paras 16-17; *Chinnere v Canada (Citizenship and Immigration)*, 2012 FC 691, at paras 9-10; *Valencia v Canada (Citizenship and Immigration)*, 2011 FC 787, at para 15; *Kaur v Canada (Citizenship and Immigration)*, 2010 FC 417, at para 14). The Officer's determination is therefore owed a significant deference, and this Court will only intervene for lack of justification, transparency and intelligibility, or if the outcome is not defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[16] Subsection 12(1) of the IRPA provides that a foreign national may be selected as a member of the family class on the basis of their relationship as the spouse or common-law partner to a Canadian citizen or a permanent resident. Subsection 14(2) provides that the Regulations may prescribe or govern matters relating to permanent residents and foreign nationals in the family class.

[17] Section 124 of the Regulations states that a foreign national is a member of the spouse or common-law partner in Canada class if they (a) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada; (b) have temporary resident status in Canada;

and (c) are the subject of a sponsorship application. Failure to meet one of the above-mentioned conditions is fatal to the application for permanent residence.

[18] Subsection 4(1) of the Regulations stipulates that a foreign national cannot be considered a spouse or common-law partner if the marriage or partnership was entered into in bad faith:

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

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

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) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

b) n'est pas authentique.

[19] Although the Officer only discusses the evidence that points away from the *bona fides* of the relationship, the Officer's conclusions are reasonable on the evidence, and her reasons are intelligible and transparent. In particular, the Officer's doubts about the Applicant and sponsor's credibility are entirely reasonable.

[20] The Applicant challenges the Officer's findings on the three discrepancies noted above. Regarding the payment of rent, the Applicant argues that her failure to discuss her employment arrangements with her husband is not evidence of a lack of *bona fide* relationship; rather, it is

common that a financial issue may strain a relationship and the Applicant may not have wanted to disclose a debt prior to marriage. Regarding the sponsor's activities of Tuesday October 8, the Applicant explains in her affidavit that in Chinese culture it is not customary to discuss one's previous marriage with one's current spouse, and this is why her husband seldom discusses his children from his previous marriage. When finding the Applicant's explanation unreasonable, the Officer failed to consider the cultural context. Regarding the alleged bawdy house at 131 Dawes, the Officer unreasonably made a credibility finding against the sponsor based on the sponsor's belief that the house was merely a massage house and not a bawdy house.

[21] Having carefully considered the Officer's reasons and the Interview Notes, I find that the Officer's conclusions with respect to the discrepancies were reasonable. It is true that the Interview Notes are not always easy to follow, but this is to be expected with these kinds of notes. However, the reasons are better-organized, and they were written a mere seven days after the interview took place.

[22] The Applicant is essentially asking this Court to re-weigh the evidence considered by the Officer and to arrive at a different conclusion. The Officer confronted the Applicant and her sponsor with the discrepancies, considered their explanations, and simply did not accept their explanations. It is not the role of this Court to reassess these explanations.

[23] In my view, the discrepancies highlighted by the Officer cast serious doubt on the parties' credibility. For example, the sponsor's apparent lack of knowledge that his former residence was allegedly a bawdy house – after being told this fact at the previous interview in 2012 –

completely undermines his credibility, and is irreconcilable with his wife's account that he felt the residence was not safe. Similarly, their contradictory answers with respect to the Applicant's sources of income greatly undermine their credibility and cast doubt on the genuineness of the relationship. As conceded by counsel for the Applicant, her explanation as to her not knowing that her husband had left the house for a couple of hours to meet with his children was not a very strong argument either.

[24] When considered as a whole, the Officer's assessment of the interview is reasonable. While there were some answers that were consistent, others were clearly inconsistent. On the one hand, there are a number of answers that were consistent, such as when and where they met, the day the Applicant met the sponsor's children, and the Applicant's ill health. However, in addition to the three major discrepancies described in the Officer's decision, the Officer noted other minor discrepancies in her Interview Notes. For example, when asked which restaurant they went to on their last outing, they both answered that they went out for dim sum for lunch for the sponsor's birthday, but gave different restaurant names. They also gave inconsistent answers as to whether the sponsor's parents are employed, and whether the sponsor ate with the Applicant on the one and only day she visited the restaurant where he works. Given this mixed bag of consistency and inconsistency, in my view the Officer's conclusions about the interview are reasonable in light of the Interview Notes in the record.

[25] The observations regarding the sponsor's demeanour are also reasonable. As this Court has often recognized, the Officer is in the best position to make a finding on credibility because she is able to observe the parties' demeanour. The Applicant's argument about taking the cultural

context into account when assessing the genuineness of the marriage is inapposite: the Officer was not commenting on the sponsor's demeanour in relation to the level of affection for his wife, but rather in assessing his credibility when confronted with a discrepancy. In her Interview Notes, the Officer noted in several places – all of which were moments when he was confronted with a discrepancy – that he “does not look at [the Applicant]”, “is avoiding eye contact”, and “appears sullen”. While it is true that the Officer is required to take cultural norms into account when assessing the genuineness of the marriage, the Officer's observations were directed more to the credibility of the sponsor's answers when confronted with discrepancies than to the genuineness of the relationship itself. Since the Officer is charged with assessing demeanour at the interview, these observations are owed deference.

[26] It was reasonable to conclude that there is little evidence to support their cohabitation at their new residence on Rowe Court in Markham. The only evidence is the driver's license address change: the Applicant submitted her driver's license with the new Markham address, and the sponsor submitted a “Change of Address Confirmation” form, showing he applied for a change of address for his driver's license. However, there are no further documents provided: no lease or bills for that address in either the Applicant's or the sponsor's name. Although they had allegedly lived at that address for only about 6 months at the time of the interview, in my view, the Officer could reasonably conclude that there was little evidence of their cohabitation in Markham.

[27] It is no doubt true that the Officer based her decision mostly on the interview and did not discuss much of the documentary evidence, but this goes to the weighing of the evidence. The

Officer does not discuss any of the supporting documents submitted with the application (i.e. tax returns, bills, rent and phone bills, photos, employment letters, and other identification), other than to list them. The Officer does note that there is little information to support their cohabitation in Markham, which is reasonable, but the Officer does not discuss the evidence that substantiates their alleged cohabitation at their prior address from 2010 to 2013. However, this is acceptable in light of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, and of the presumption that the Officer has taken all the evidence into account. The Officer is not required to discuss every piece of documentary evidence. Moreover, none of the documentary evidence directly contradicts the Officer's observations and findings. In any case, the Applicant does not explain how the other documentary evidence would have made a difference, other than to say it was given too little weight in relation to the interview discrepancies. This lack of weight, by itself, is not a reviewable error. Indeed, counsel did not raise that argument at the hearing.

V. Conclusion

[28] For all of the above reasons, this application for judicial review is dismissed. Neither party proposed a question for certification, and none is certified.

JUDGMENT

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

No question is certified.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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