

Federal Court



Cour fédérale

**Date: 20160622**

**Docket: IMM-3737-15**

**Citation: 2016 FC 700**

**Ottawa, Ontario, June 22, 2016**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**RYCHEN DOLMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Rychen Dolma, applies for judicial review of a decision of a visa officer (the Officer) at the Canadian High Commission in New Delhi, India, dated June 29, 2015, refusing her application for permanent residence.

[2] The Applicant applied as the accompanying spouse of Karma Dorjee, a protected person living in Canada. The Officer found the Applicant's marriage to Mr. Dorjee was not genuine, and was entered into primarily for the purpose of acquiring permanent residence in Canada.

[3] The determinative issue of on this application is whether the procedural fairness rights of the Applicant were respected, and specifically, whether the Applicant was aware of the case she had to meet given the concern of the Officer regarding the date on a travel document.

[4] Procedural fairness issues are reviewable on a correctness standard, and therefore no deference is accorded to the Officer's decision: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53.

[5] The Officer had concerns with the Applicant's inconsistent evidence as to when Mr. Dorjee first visited her in Nepal. She first stated Mr. Dorjee visited in January 2011, and then stated that he visited from December 2011 until January 2012. The Officer was surprised the Applicant did not know how much time she had spent with Mr. Dorjee, noting the couple would have spent less than three days together after the wedding on January 28, 2012 if Mr. Dorjee had left in January 2012. The Officer expected the Applicant to remember this fact.

[6] The Applicant acknowledges her confused testimony on this point, but submits it was an innocent misunderstanding: *Owusu-Ansah v Canada (Minister of Employment and Immigration)* (1989), 98 NR 312 (FCA). She correctly stated that Mr. Dorjee had come for one month, and her supporting documentary evidence (the dates of receipts during Mr. Dorjee's visit) corroborated the dates in his flight itinerary. The copy of Mr. Dorjee's flight itinerary indicates he was in Nepal from January 2012 to February 2012.

[7] The Applicant said that the letter from the hospital dated November 2011 prompted Mr. Dorjee to come to Nepal. The Officer, however, concluded that Mr. Dorjee had already

booked his airline ticket in August 2011. The Global Case Management System (GCMS) notes indicate the Officer did mention to the Applicant that the flight appears to have been booked in August 2011, but there is no indication the Officer explained the basis for this finding. It appears the Officer was relying on a date – “12/8/2011” – which is found on the bottom right hand corner of the flight itinerary.

[8] The Applicant states that the date of 12/8/2011 was assumed by the Officer to be August 12, 2011 and not the actual date of December 8, 2011.

[9] The comments in *Mahamoud v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1232 at paragraph 25, are applicable here:

[25] The Board’s fixation on the details of particular dates caused it to forget the substance of the facts on which the Applicant based her claim. Even if the Board was right to doubt some aspects of the circumstances which had led the Applicant to leave Djibouti, there were facts in evidence, including undisputed documentary evidence, which could provide support for her claim that there was a real danger that she might be subject to persecution or risk to her life or risk of cruel and unusual treatment in Djibouti. The Board did not take account of this evidence.

[10] Similarly, in this case, there was documentary evidence confirming the date Mr. Dorjee was in Nepal, but the Officer was fixated on the Applicant’s inability to recall those dates with precision and relied upon that as a means to test her credibility. While doing so is not an impermissible method of credibility assessment, the fixation on such details distracted the Officer from assessing the overall substance of the Applicant’s other evidence, including the documentary evidence.

[11] While the parties disagree on how the date 12/8/2011 should be interpreted, the correct interpretation of this evidence is irrelevant to the central issue here. It is sufficient to note that the

Officer's finding, even if a reasonable interpretation of the evidence, was nevertheless made without affording the Applicant an adequate opportunity to respond.

[12] The GCMS notes indicate that the Officer's concern – which went to the heart of the Applicant's credibility – was not explained to the Applicant.

[13] Even accepting that applicants for permanent residence are entitled to only a low degree of procedural fairness by a visa officer, in these circumstances, the Applicant could not fairly respond to the case she had to meet.

[14] Therefore, I am of the view that the Officer had a duty to provide the Applicant with an opportunity to address her concerns and that, by failing to adequately do so in respect of the flight itinerary, the Officer breached the Applicant's right to procedural fairness.

[15] This conclusion is sufficient to dispose of the application, and there is no need for me to determine whether the Officer's decision is reasonable on the merits.

[16] The parties did not submit questions for certification, and this case does not raise serious questions of general importance.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is granted and the matter is remitted to a different Officer for re-determination.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3737-15

**STYLE OF CAUSE:** RYCHEN DOLMA v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 26, 2016

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JUNE 22, 2016

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