Federal Court  Cour fédérale

Date: 20180108

Docket: IMM-3023-17

Citation: 2018 FC 8

Montréal, Quebec, January 8, 2018

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

JOSEPH KOBBI COBINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Joseph Kobbi Cobina, is a citizen of Ghana who has a checkered immigration history in Canada. He also has a checkered marital history. It is the combination of these which gives rise to the present application for judicial review of a decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada (IRB).

[2] The IAD's decision confirmed an earlier decision of the IRB's Immigration Division which refused to issue a permanent resident visa (as a member of the family class) to the applicant's current spouse, Janet Opoku. The basis for the IAD's decision was that Ms. Opoku was excluded from the family class pursuant to s. 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] because her sponsor (the applicant in this case) had previously made an application for permanent residence and became a permanent resident and, at the time of that application, Ms. Opoku was a non-accompanying family member of the sponsor and was not examined.

[3] There is no dispute concerning the interpretation of s. 117(9)(d) of the *IRPR*. There is also no dispute that Ms. Opoku was not examined in the context of the applicant's permanent residence application. The dispute concerns whether Ms. Opoku was a family member of the applicant at the time he applied for permanent residence in Canada. Specifically, the applicant disputes the IAD's conclusion that, on a balance of probabilities, he and Ms. Opoku were in a common law relationship at that time.

[4] Let me begin by detailing the applicant's checkered marital history. The applicant has been married three times. He first married Grace Otiwaa Marfo in 1998 in Ghana. They had two children. This marriage ended in divorce in 2002.

[5] Later in 2002, the applicant married for the second time, this time to Rondell Marilyn Nicholls, a permanent resident of Canada. This second marriage ended in divorce in 2009, though the two parted ways in 2006. No children resulted from the applicant's second marriage.

However, it is important to note that both the applicant and his second wife (Ms. Nicholls) had children with other partners during the time they were married to one another. In the applicant's case, he fathered a son (Joshua) in 2003 and a daughter (Esther) in 2007 with Ms. Opoku (who would later become his third wife).

[6] The applicant married Ms. Opoku in 2009. It is agreed that they had a relationship beginning in 2002. The dispute on the facts comes from the applicant's claim that he ended his relationship with Ms. Opoku around the end of 2002 and was unaware that he had fathered Joshua until 2005 or 2006. He claims he was told of Joshua in 2005, but only came to recognize him as his son in 2006 when he resumed his relationship with Ms. Opoku.

[7] The issue of whether Ms. Opoku and the applicant ended their relationship in 2002 before resuming it in 2006 is important because it determines whether they were in a common law relationship when the applicant made his permanent residence application, and hence whether Ms. Opoku is excluded from the family class.

[8] Having described the applicant's checkered marital history, I turn now to his checkered immigration history.

[9] The applicant came to Canada from his native Ghana in 2002 claiming to be following up on business contacts. However, while here, he entered into his second marriage (with Ms. Nicholls). He returned to Ghana sometime later in 2002. In early 2003, the applicant filed his application for permanent residence and Ms. Nicholls filed an application to sponsor him. The

applicant's marriage to Ms. Nicholls and subsequent permanent residence application were noted when the applicant sought to re-enter Canada in 2003. The applicant claimed again that the purpose of his visit was business, though he could not provide adequate evidence of his dealings. Moreover, he knew little about Ms. Nicholls, and denied repeatedly that he had a pending application for permanent residence in Canada. As a result, a customs officer concluded that the applicant was not credible and that his marriage to Ms. Nicholls was one of convenience. The applicant was ruled inadmissible to Canada for two years. These conclusions are not disputed.

[10] Despite the applicant's lengthy separation from Ms. Nicholls, her sponsorship of the applicant's permanent residence application was eventually successful in 2006. However, their reunion did not last long. When the applicant arrived in Canada, each told the other of their children produced with other partners, and they agreed to split. The applicant returned to Ghana later in 2006 and resumed his relationship with Ms. Opoku. It should be repeated at this point that the applicant argues that, though he was aware of Joshua at the time he entered Canada as a permanent resident, he had not recognized the boy as his son until after returning to Ghana.

[11] We jump now to 2011 when Ms. Opoku filed an application for permanent residence and the applicant filed an application to sponsor her. In an interview with an immigration official in 2012 concerning her application, Ms. Opoku indicated that she had been in a relationship with the applicant continuously from 2002 until the applicant obtained his permanent residence in Canada. As indicated above, this statement supports the conclusion that Ms. Opoku is excluded from the family class as a non-accompanying family member of the sponsor at the time he applied for permanent residence.

[12] The applicant asserts that Ms. Opoku was lying when she made this statement. The applicant argues that she was embellishing her story, trying to avoid a finding that her marriage to the applicant was not genuine (as the applicant's previous marriage had been found to be). The applicant also argues that Ms. Opoku wished to avoid the stigma associated with having a child by a man who was married to another woman. The applicant relies on supporting statements from a number of family members and acquaintances. The applicant asserts that he did not see Ms. Opoku at all during the period from the end of 2002 until his return to Ghana in 2006.

[13] The IAD was faced with a choice between two conclusions:

(i) believing that Ms. Opoku was telling the truth in her 2012 interview, and that subsequent statements to the contrary are untrue, such that she was indeed in a relationship with the applicant when he applied for permanent residence in Canada, and is therefore excluded from the family class; or

(ii) believing that Ms. Opoku was lying in her 2012 interview, and that the subsequent statements are true, such that she is not excluded.

[14] The gist of the applicant's argument in the present judicial review is that it was unreasonable for the IAD to reach the first conclusion.

[15] On the evidence, there was a basis (not least in the form of Ms. Opoku's own testimony) for disbelieving the subsequent statements. The IAD also noted the implausibility of the applicant's story that he did not see Ms. Opoku at all during the period in question. They lived in the same suburb of Accra and had close family connections (her brother and his sister were

married or in a common-law relationship). The IAD rejected the applicant's explanation that he was often away on business on the basis that he had custody of his two children from his first marriage during that time and could not have been away very often. I am not convinced that it was unreasonable for the IAD to prefer Ms. Opoku's 2012 statement, particularly in the case of this applicant, who has a history of misrepresentation before Canadian immigration officials.

[16] As regards the IAD's reasons, I disagree with the applicant's argument that the IAD did not adequately address all of the evidence he put forward to believe that Ms. Opoku had been lying in her 2012 interview. The IAD addressed the broad lines of the applicant's current story. The IAD was not obliged to make explicit reference to every item of evidence relied on by the applicant. I am not convinced that the IAD failed to consider any important evidence.

[17] The majority of the applicant's arguments in his memorandum-in-chief concerned alleged violations of his rights under the *Canadian Charter of Rights and Freedoms* and various international agreements. None of these arguments was addressed in the applicant's oral submissions. The applicant did not even respond to the respondent's various counter-arguments on these points. The applicant's arguments on these points were not particularized, nor were they supported by any cited jurisprudence. I am inclined to agree with the respondent's submission that these arguments serve mainly to distract from the principal issues in dispute in the present application. Suffice it to say that I find no merit in these arguments.

[18] I conclude that the present application should be dismissed. The parties are agreed that there is no serious question of general importance to be certified in this case.

JUDGMENT in IMM-3023-17

THIS COURT'S JUDGMENT is that:

1. The present application is dismissed.

2. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Stewart Istvanffy	FOR THE APPLICANT
Émilie Tremblay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude légale Stewart Istvanffy Barrister and Solicitor Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT