

Federal Court



Cour fédérale

Date: 20180411

Docket: IMM-512-17

Citation: 2018 FC 391

Ottawa, Ontario, April 11, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MEHMET AYDMIR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Mehmet Aydmir (the “Applicant”) seeks judicial review of the decision of an Officer (the “Officer”) refusing his application for permanent residence as a member of the “Spouse or Common-Law Partner in Canada” class. The application was refused because the Officer was not satisfied that the marriage between the Applicant and his spouse was genuine, within the scope of subsection 4 (1) of the *Immigration and Refugee Protection Regulations*, SOR/ 2002- 227 (the “Regulations”).

[2] The Applicant is a citizen of Turkey. Upon coming to Canada in February 2011, he claimed protection as a Convention refugee but his claim was rejected in January 2013. His application for permanent residence on Humanitarian and Compassionate (“H&C”) grounds, pursuant to subsection 25 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001,c. 27 (the “Act”), was refused in March 2013.

[3] He met his wife at a party in January 2013. At that time, his wife, a permanent resident of Canada, was pregnant by another man. The Applicant married his wife in April 2013 and the spousal sponsorship application was submitted in September 2013.

[4] The Applicant and his wife were interviewed by the Officer in January 2017. Among other things they were questioned about the development of their relationship, financial standing and residential address. The Officer was not satisfied with the answers provided or with the explanations given for the periods of time that the Applicant and his wife spent apart in the early days of their marriage.

[5] The Applicant now argues that the Officer failed to give him the opportunity to respond to specific concerns, thereby giving rise to a breach of procedural fairness. As well, he argues that the Officer took a microscopic approach to details respecting the marital relationship and failed to consider photographs of him with his step-daughter.

[6] The issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, 385 N.R. 206 (S.C.C.). The

genuineness of the marriage is a question of mixed fact and law and is reviewable on the standard of reasonableness: see the decision in *Keo v. Canada (Minister of Citizenship and Immigration)* 2011 FC 1456.

[7] The Applicant submits that the Officer breached the duty of procedural fairness by failing to bring concerns to his attention, specifically his relationship with his step-daughter.

[8] I see no error arising on this ground.

[9] The Applicant was provided the opportunity to discuss his relationship with his young step-daughter during the interview and provided a brief answer. I am not satisfied that the Applicant has identified “concerns” that should have been brought to his attention.

[10] The Applicant also raised the issue of the adequacy of reasons in the Memorandum of Fact and Law. However, in light of the decision of the Supreme Court of Canada in *Newfoundland and Labrador Nurses Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 S.C.R. 708, I am satisfied that the reasons provided here were adequate for the purpose of the decision in issue.

[11] The merits of the Officer’s decision are reviewable on the standard of reasonableness, as noted above. According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, that standard requires that reasons be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[12] I am not satisfied that the Officer's assessment of the marital relationship meets this test. There appears to be an element of scrupulosity in the consideration of the signatures on the lease and no allowance for the young age of the step-daughter in considering the Applicant's relationship with her, in light of her young age.

[13] In determining this application for judicial review, I have only taken account of the evidence that was before the Officer and not the additional evidence and argument that the Applicant improperly included in his affidavit which was filed as part of his Application record in this proceeding.

[14] In the result, this application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

JUDGMENT in IMM-512-17

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different Officer for re-determination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-512-17

STYLE OF CAUSE: MEHMET AYDMIR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 4, 2017

JUDGMENT AND REASONS: HENEGHAN J.

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