

Federal Court



Cour fédérale

Date: 20180816

Docket: IMM-381-18

Citation: 2018 FC 840

Vancouver, British Columbia, August 16, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

SIMEI CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Simei Chen, is a fifty-six (56) year old citizen of China. Her husband and sponsor is a seventy (70) year old citizen of Canada. The Applicant was introduced to her husband by a mutual friend in early December 2007. After speaking with each other by

telephone over the next month, the Applicant and her husband met for the first time on January 17, 2008, when the Applicant's husband was visiting China. They married four (4) days later.

[2] In April 2008, the Applicant submitted an overseas family class application for permanent residence, sponsored by her husband. The application was refused in April 2009. The decision was appealed to the Immigration Appeal Division [IAD] and was dismissed in January 2011. The IAD found that the Applicant's husband, as the appellant in the proceedings, had not demonstrated that the marriage was genuine. The IAD noted a number of inconsistencies in the testimony regarding the introduction and first meeting of the Applicant and her husband which undermined their credibility. It also noted that in other areas of testimony, the responses were more akin to memorized answers than spontaneous descriptions of past events. Finally, the IAD found that the haste in entering into the marriage supported the Minister's contention that the primary purpose of the marriage was to acquire status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] In September 2013, the Applicant submitted a new application for permanent residence in the overseas family class, sponsored by her husband. The application was refused in December 2013. The Applicant's husband again appealed the decision to the IAD but withdrew his appeal in August 2014.

[4] On September 19, 2015, the Applicant entered Canada from the United States without authorization. She claims that she made the independent decision to travel to Canada to be with

her husband after learning that he would require surgery and would no longer be able to travel to China.

[5] On July 15, 2016, the Applicant applied for permanent residence as a member of the spouse and common-law partner in Canada class, sponsored by her husband. The Applicant and her husband were both convoked for an interview on December 5, 2017 and attended with legal counsel and an interpreter. During the interview that lasted approximately two (2) hours, the Applicant and her husband were asked numerous questions on various issues relating to their background, family relations, residence, finances, relationships, marriage, sexual relations, and day to day life.

[6] On January 19, 2018, the Immigration Officer [Officer] refused the Applicant's application, finding that she had entered into her marriage primarily for the purpose of acquiring permanent resident status and that her marriage was not genuine. The Officer noted in the answers provided by the Applicant and her husband six (6) discrepancies which raised concerns regarding the genuineness of their relationship and the credibility of the Applicant and her husband. The discrepancies concerned the food the Applicant and her husband had eaten for dinner the night before the interview, the last time they had eaten at a restaurant together, the number of grandchildren the Applicant had, the time they woke up on the morning of the interview, the Applicant's highest level of education and their sexual relations. The Officer concluded that the discrepancies were significant and outweighed the positive factors established by the Applicant.

[7] The Applicant seeks judicial review of this decision. She submits that the Officer unreasonably identified these inconsistencies in isolation without consideration or analysis of the other consistent testimony and documentary evidence provided in support of the application. The Applicant also submits that the Officer's conclusion on the primary purpose of the marriage is not connected to the reasons of the decision because the Officer did not refer to any evidence that would suggest that the Applicant had the motivation at the time of marriage to acquire immigration status as a primary objective.

II. Analysis

[8] The parties agree that the question of whether a marriage is genuine or entered into for immigration purposes is one of mixed fact and law, reviewable on a standard of reasonableness (*Kaur v Canada (Citizenship and Immigration)*, 2018 FC 657 at para 15; *Williams v Canada (Citizenship and Immigration)*, 2017 FC 707 at para 13; *Ma v Canada (Citizenship and Immigration)*, 2016 FC 1283 at para 7).

[9] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[10] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] provides that 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 IRPA, or (b) is not genuine. As the tests under paragraphs 4(1)(a) and (b) of the IRPR are disjunctive, the Applicant must demonstrate that the marriage is both genuine and that it was not entered into for the purpose of acquiring status in Canada. The Applicant has the onus of adducing all the evidence required to prove a successful claim (*Onwubolu v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 19 at paras 13, 15).

[11] The determinative issue in this application is the Officer's finding that the marriage was not genuine. As I find the conclusion to be reasonable, I need not consider the Applicant's arguments regarding the Officer's analysis on the Applicant's motivation at the time of marriage.

[12] I agree with the Applicant that the discrepancy regarding what time the Applicant and her husband woke up on the morning of the interview is trivial. However, the discrepancy identified by the Officer regarding the number of grandchildren the Applicant has is real and could have reasonably raised concerns in the mind of the Officer regarding the genuineness of the marriage. During the interview, the Applicant indicated that she has three (3) grandchildren. The Applicant's husband, on the other hand, responded that the Applicant had four (4) grandchildren. While the Applicant argues that her husband confused the number of the Applicant's grandchildren with her children, it is clear from the answer given by the Applicant's husband that he believed she had four (4) grandchildren. He responded that the oldest daughter had one (1) daughter, the second had a son and a daughter and the Applicant's son had a son, for a total of

four (4) grandchildren. This contradiction, which relates to an important element of the Applicant's family situation, is not insignificant.

[13] Likewise, the inconsistencies relating to the highest level of education completed by the Applicant and the last time they had dinner at a restaurant together are equally notable. The Applicant indicated that she had seven (7) years of schooling while the Applicant's husband responded that she had attended school for nine (9) years. As for the restaurant, the Applicant stated that the sponsor's nephew took them to his home for dinner while the Applicant's husband responded that his niece took them to a dim sum restaurant on Kingsway in 2015. The Officer also reasonably noted discrepancies regarding what they had eaten the night before the interview and the extent of their sexual relations. While the Applicant and her husband provide explanations for the inconsistencies in their affidavit filed in support of the application for judicial review, the information was not before the Officer when the decision was made and therefore cannot be considered (*Onowu v Canada (Citizenship and Immigration)*, 2015 FC 64 at paras 24-25).

[14] The Applicant argues that the Officer failed to balance the consistent testimony with the inconsistent testimony. I disagree. The Officer acknowledges the consistent testimony by recognizing that the Applicant and her husband have "some sort of relationship in which they spend time together, communicate regularly, and have maintained contact for a lengthy period of time." The Officer considers however that the contradictory responses regarding some basic information of their life together are significant and raise concerns regarding the overall credibility of the Applicant and her husband.

[15] The Applicant further argues that the Officer did not sufficiently analyse the substantial documentary evidence provided by the Applicant. In particular, the Applicant considers that the life insurance beneficiary designation and the letter from the landlord support the genuineness of the marriage and should have been addressed by the Officer.

[16] I am not persuaded by the Applicant's argument.

[17] It is well recognized that the decision maker is presumed to have considered all the evidence before it (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) and is not required to address all of the documentary evidence in its reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Lai v Canada (Citizenship and Immigration)*, 2015 FC 370 at para 27).

[18] Here, even though the Officer does not discuss every piece of evidence, it is apparent from the reasons that the Officer considered the Applicant's documentary evidence. After listing the Applicant's documents including the life insurance beneficiary designation and the letter from the landlord, the Officer indicates that the Applicant's documents and submissions were carefully reviewed. While one might be tempted to believe the Officer's statement is nothing more than a boilerplate statement, the reasons demonstrate otherwise. The Officer explicitly refers to some of the documentation provided by the Applicant, such as the photos and evidence of travel which the Officer considers to be positive elements in the application. Moreover, it is apparent from the Officer's comment in the decision regarding his concerns about the different

addresses associated with the Applicant's husband that the Officer reviewed the Applicant's documents since the inconsistency does not originate from the answers provided in the interview.

[19] As for the Officer's failure to discuss the life insurance beneficiary designation and the letter from the landlord in his reasons, I am not persuaded that these documents contradict the Officer's findings as they do not indisputably establish the genuineness of the marriage and have no more probative weight than the other documents provided by the Applicant. There may be a number of reasons why the Applicant's husband would designate the Applicant as his life beneficiary. As for the landlord's letter, it simply states that the landlord was advised by the Applicant's husband that the Applicant had moved in with him and his sister approximately in September 2015. It might have been more persuasive for the Applicant to produce a letter from the Applicant's sister affirming that her brother and the Applicant were living in a conjugal relationship or to produce letters to the same effect from other family members or acquaintances. In the end, although the Applicant disagrees with the weight given to her evidence by the Officer, it was reasonably open to the Officer to find that the positive elements were insufficient to overcome the negative factors identified in the Applicant's case.

[20] Upon review of the Applicant's submissions, I find that the Applicant is essentially asking this Court to reweigh the evidence before the Officer and to come to a different conclusion. That is not the role of the Court on judicial review (*Khosa* at para 61).

[21] While the Officer's reasons may not be perfect, when viewed as a whole, I find that the Officer's decision is reasonable as the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir* at para 47).

[22] Accordingly, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-381-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: SIMEI CHEN v THE MINISTER OF CITIZENSHIP
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