Federal Court  Cour fédérale

Date: 20181109

Docket: IMM-3686-17

Citation: 2018 FC 1135

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 9, 2018

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

LYUBOV YAKIVNA SHUMILO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of an immigration officer who refused the application for permanent residence filed by Lyubov Yakivna Shumilo in the "Spouse or Common-Law Partner" class. The officer found that the applicant's marriage to a Canadian citizen was entered into primarily for the purpose of acquiring a status or privilege.

The applicant was therefore not a “spouse” within the meaning of subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] Ms. Shumilo argues that the decision is unreasonable because the officer ignored credible testimony and did not take into account the nature of the conjugal relationship between her and her spouse.

I. Background

[3] The applicant is a citizen of Ukraine. She arrived in Canada on August 13, 2011, and filed a refugee protection claim alleging that she had been threatened by individuals who wanted to buy her apartment. On August 15, 2014, the Refugee Protection Division (RPD) rejected her refugee protection claim. Her application for leave and for judicial review was denied by this Court on November 30, 2014.

[4] On February 15, 2015, Ms. Shumilo married Annabel Diane Desmarais. They met in 2011 and have spent considerable time together since then. Between 2013 and 2015, their relationship progressed, and in February 2015, they decided to get married. During that period, the two of them lived through some trying personal difficulties: Ms. Desmarais lost her job because she had trouble adapting to new computer systems, and Ms. Shumilo had problems with her immigration status.

[5] They obtained a marriage certificate and held a ceremony before two witnesses. They have been living together since their wedding.

[6] Ms. Shumilo was called in for interviews in February and March 2015 to schedule her removal, but she did not report for any of these meetings, claiming that her state of health made it impossible. On March 4, 2015, a warrant for the applicant's arrest was issued. She requested a deferral of her removal, which was denied on July 8, 2015. On September 21, 2015, the Court dismissed her application for leave and for judicial review. Once again, the applicant was called in for a meeting, on January 12, 2016, to prepare for her removal. She did not report for that meeting.

[7] In April 2016, the applicant filed an application for permanent residence in the spouse or common-law partner in Canada class. Further to this application, she tried to delay her removal, pending the decision on her application for permanent residence. On April 27, 2017, the Court granted the application for a stay of removal.

[8] On June 29, 2017, the applicant and her spouse reported for an interview regarding the applicant's application for permanent residence. On July 14, the application for permanent residence was refused. It was that decision that gave rise to the present application for judicial review.

II. Issues and standard of review

[9] The sole issue in this case is whether the officer's decision is reasonable.

[10] The officer's decision is subject to the standard of review of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]); *Dalumay v Canada (Citizenship and*

Immigration), 2012 FC 1179 at para 19). Applying the reasonableness standard requires considering "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, para 47).

[11] The Supreme Court of Canada has also stated that judicial review is not a line-by-line treasure hunt for error: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34. Moreover, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

III. Analysis

[12] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] provides that a Canadian citizen may sponsor his or her spouse or common-law partner for permanent resident status, and eventually Canadian citizenship. But for this to happen, it must be established that the marriage is valid under the IRPA.

[13] The spouse or common-law partner class is described in section 124 of the IRPR:

Member	**Qualité**
124 A foreign national is a member of the spouse or common-law partner in Canada class if they	**124** Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :

(a) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;	**a)** il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;
(b) have temporary resident status in Canada; and	**b)** il détient le statut de résident temporaire au Canada;
(c) are the subject of a sponsorship application.	**c)** une demande de parrainage a été déposée à son égard.

[14] Subsection 4(1) of the IRPR states that a foreign national is not considered a spouse or common-law partner if his or her marriage was entered into primarily for the purpose of acquiring any status or privilege under the IRPA:

Bad faith	**Mauvaise foi**
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	**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) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

[15] The burden of establishing that the requirements of subsection 4(1) have been met falls on the applicant: *Rahman c Canada (Citizenship and Immigration)*, 2013 FC 877 at para 27.

[16] The applicant argues that the officer made three errors: (1) rejecting credible testimony by the spouses regarding their relationship; (2) not weighing the positive and negative factors in the case; and (3) rendering a predetermined decision based on the fact that the applicant and her spouse do not have sexual relations.

[17] In order to assess the applicant's arguments, a summary of the officer's decision is required.

A. *Decision under review*

[18] The officer began her analysis by noting that the applicant had to show that she [TRANSLATION] "does not meet the definition in R4 of the IRPR, in that her marriage was not entered into for the purpose of acquiring permanent residence in Canada". The officer quoted the definition of "conjugal relationship" in section 5.20 of *Operational Manual IP 8 – Spouse or Common-law Partner in Canada Class* (Manual IP 8):

> **5.20 Conjugal relationship**
>
> In assessing applications in Canada by spouses and common-law partners, officers must be satisfied that a conjugal relationship exists. The word "conjugal" indicates:
>
> - a significant degree of attachment, both physical and emotional;
> - an exclusive relationship;
> - a mutual and continuing commitment to a shared life together; and
> - emotional and financial interdependency.

[19] The officer accepted that Ms. Shumilo and Ms. Desmarais live together and share a close and friendly relationship. However, after analyzing their interview answers and the documentation they submitted, the officer was not satisfied that their conjugal relationship was genuine:

> [TRANSLATION]
>
> The answers given during the interview did not demonstrate, to the officer's satisfaction, that the applicant and the sponsor share an emotional and financial interdependency that one would reasonably expect of a genuine conjugal relationship. Many knowledge gaps were noted during the interview, suggesting that they have a rather limited familiarity with their respective routines. They also seem to have little or no intimacy or emotional attachment to each other. For example, the sponsor says that she has never been in her spouse's room. The applicant only speaks Russian, while the sponsor speaks English. On this subject, they say that they communicate using a tablet which they recently purchased. When asked how they communicated before buying this tablet, they answered that it was through non-verbal language. In my view, this explanation is not credible.
>
> I also noted that when the applicant talks about her spouse, most of the time, she refers to her as her "sponsor" rather than mentioning her name. . . .
>
> In addition, the sponsor was adamant that they never talked about household finances together. Accordingly, when her spouse needs something, she asks her granddaughter, rather than ask the applicant for help. It is her granddaughter who sees to her personal finances and her individual needs. . . .

[20] The officer noted a few other gaps in the evidence related to their day-to-day relationship, which led her to make the following finding: [TRANSLATION] "Clearly, the sponsor and the applicant seem to share a friendship. I do not doubt that they live together. However, they seem to live as roommates rather than in a union based on romantic feelings toward each other".

[21] Noting Ms. Shumilo's efforts to obtain permanent resident status and the procedural steps she had taken, the officer concluded as follows:

> [TRANSLATION]
>
> Given the applicant's immigration history, as well as her imminent departure after having exhausted all avenues for extending her stay in Canada, it is reasonable to believe that this marriage was primarily for the purpose of acquiring a status or privilege and therefore is not genuine.

[22] For all these reasons, the officer decided that Ms. Shumilo was a person described in subsection 4(1) of the IRPR.

B. *Position of Ms. Shumilo*

[23] Ms. Shumilo is of the opinion that the officer's decision is unreasonable because (i) credible testimony was not valued fairly; (ii) there was no weighing of the positive and negative elements in the officer's analysis; and (iii) the officer placed too much emphasis on the sexual aspect of their relationship.

[24] Ms. Shumilo argues that the officer ignored much of her testimony and that of her spouse regarding the validity of the marriage and their day-to-day lives. She notes that neither of them [TRANSLATION] "tried to embellish their marital life to conform to the popular conception of a relationship involving sexual relations". She is of the view that the doubts expressed by the officer regarding the validity of the relationship [TRANSLATION] "seem have pre-existed the interview", and that the officer ignored all the positive evidence.

[25] She claims that the motivation for their marriage is quite simply their commitment to supporting each other and weathering together the trials and tribulations facing them, today and in the future. She submits that their marriage is not related to her immigration difficulties. Ms. Shumilo notes that the evidence she submitted established the genuineness of the conjugal relationship, in accordance with the categories established by Manual IP 8, section 5.20 (cited above).

[26] For example, the spouses testified that they could easily communicate with each other despite not speaking the same language, but the officer expressed doubts. The officer ignored evidence indicating that the spouses were familiar with each other's day-to-day routines, focusing solely on a few gaps or omissions in their individual testimonies. The officer also placed a great deal of emphasis on their separate finances. However, this arrangement was their choice and is not a valid reason for doubting their interdependency.

[27] According to Ms. Shumilo, the officer's prejudice against her atypical conjugal relationship is the reason her application was refused and [TRANSLATION] "demonstrates a totally close-minded attitude toward the spouses' life choices and a lack of understanding of the nature of their attachment" (para 32 of Ms. Shumilo's memorandum). I again quote Ms. Shumilo's memorandum (at para 20):

> [TRANSLATION]
>
> Regarding the genuineness of the relationship, it is obvious that the main reason the officer does not believe the relationship is genuine is because the spouses do not have sexual relations. This conclusion is implied in the decision and in the rejection of all the positive aspects of their union. This conclusion, too, is unreasonable. The officer reduces the definition of physical attachment to physical intimacy alone, whereas the statements

> made during the spouses' interview reported may other expressions and acts of intimacy.

[28] At the hearing, Ms. Shumilo referred to the concept of a [TRANSLATION] "Boston marriage". According to her, this is a [TRANSLATION] "sincere union, an affectionate relationship of co-dependence between two women who have chosen to live together, in intimacy and trust, without a sexual dimension being involved". She submits that this is exactly the sort of relationship that she has with her spouse, but that this type of union was viewed as opportunistic by the officer. Boston marriage must be recognized as a conjugal relationship because this sort of relationship meets the elements of the definition of "conjugal relationship" in section 5.20 of Manual IP 8, cited by the officer.

[29] Ms. Shumilo states that it is discriminatory to reduce the concept of physical attachment to a matter of sexuality. Among the multitude of sexual orientations, there is asexuality, and sexual relations are not part of the obligations related to marriage.

[30] Ms. Shumilo argues that the lack of weighing of the positive and negative elements in the decision is unreasonable. She cites *Chekroun v Canada (Citizenship and Immigration)*, 2013 FC 738, which requires an officer to consider all the evidence. The officer did not explain why the knowledge gaps to which the decision refers are more significant than the expressed reasons for their commitment, the history and duration of their relationship, their plans for the future, and their sincere desire to cohabit, as outlined in their testimony.

C. *Position of the respondent*

[31] The respondent argues that the decision is reasonable and that the officer considered the applicable law and the relevant facts. The onus is on the applicant to establish compliance with the requirements of subsection 4(1) of the IRPR. It is not the Court's place to reassess the evidence.

[32] The officer weighed the positive and negative elements on the record. The officer was also sensitive to the special nature of the applicant's relationship with her sponsor and concluded that she did not doubt the couple's apparent friendship, or their cohabitation. However, the officer could not ignore the context in which the marriage and the application for permanent residence arose, namely, the applicant's imminent departure after having exhausted all the avenues available to her to extend her stay in Canada.

[33] The officer's analysis is clear, rational and supported by the evidence. The officer demonstrated that she reviewed the relationship as a whole, including the sexual aspect. There is no indication in the decision or in the record that the officer placed too much emphasis on this aspect. On the contrary, the officer mentioned ample evidence suggesting a lack of interdependency and gaps in the knowledge of each other's day-to-day lives. The officer considered all this evidence, including their financial relationship and the key role that the applicant's granddaughter plays in her day-to-day life.

[34] The officer did not err in finding that the evidence demonstrated a relationship of friendship, but not a conjugal relationship. It is impossible to ignore that the relationship evolved in tandem with the applicant's immigration process as it unfolded.

[35] The Court cannot rely on the concept of a Boston marriage because this idea was not presented to the officer. It was not an error on the officer's part to not consider a concept that was not presented to her at the interview. The respondent states that the concept of a "conjugal relationship" is limited by the law and the IRPR.

D. *Discussion*

[36] Whether a relationship is genuine or for the purpose of acquiring a status under the IRPA is essentially a question of mixed fact and law, and a largely factual determination that is reviewable against the reasonableness standard: *Valencia v Canada (Citizenship and Immigration)*, 2011 FC 787 at para 15 [*Valencia*]; *Kaur v Canada (Citizenship and Immigration)*, 2010 FC 417 at para 14; *Doraisamy v Canada (Citizenship and Immigration)*, 2012 FC 1053 at para 44 [*Doraisamy*]. It is therefore necessary to consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, para 47).

[37] In the case at bar, Ms. Shumilo's position focuses on two key factors. She argues that the officer's decision is unreasonable primarily because she is of the view that the officer (i) placed too much emphasis on the lack of sexual relations in their conjugal relationship, and (ii) did not

consider all the aspects of the spouses' testimony and ignored other evidence regarding the nature of the relationship, its duration, and the degree of interdependency.

(1) Did the officer place too much emphasis on sexuality as a factor?

[38] I do not agree with Ms. Shumilo on this aspect of her argument. The criteria for assessing a conjugal relationship as established by the law and by Manual IP 8 are balanced and take into consideration all the aspects of this sort of relationship. The assessment criteria do not place any particular emphasis on the sexual aspect, or the lack thereof, in determining whether the relationship is a conjugal one. In this case, the officer did not apply a definition of a conjugal relationship limited to the sexual aspect of the relationship, and I note that the decision focuses on the criteria established by the law and by Manual IP 8.

[39] Section 5.20 of Manual IP 8 establishes criteria to guide officers when assessing the genuineness of a relationship. The officer's decision refers to the section 5.20 criteria, and I can find no errors in this analysis. I agree that the Manual is not legally binding in the same way as the relevant statutory provisions, including subsection 4(1) of the IRPR; however, the Supreme Court has recognized that "the Guidelines are useful in indicating what constitutes a reasonable interpretation of a given provision of the [IRPA]" *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32.

[40] Section 5.20 of Manual IP 8 refers to *Manual OP 2 – Processing Members of the Family Class* (Manual OP 2), which guides officers on the characteristics of conjugal relationships and

the methods for assessing them. The following sections of Manual OP 2 are those mentioned in section 5.20 of Manual IP 8:

> **5.25 Characteristics of conjugal relationships**
>
> . . .
>
> The term "conjugal" was originally used to describe marriage. Then, over the years, it was expanded by various court decisions to describe "marriage-like" relationships, i.e., a man and a woman in a common-law relationship. With the *M. v. H.* decision in 1999, the Supreme Court of Canada further expanded the term to include same-sex common-law couples.
>
> The word "conjugal" does not mean "sexual relations" alone. It signifies that there is a significant degree of attachment between two partners. The word "conjugal" comes from two Latin words, one meaning "join" and the other meaning "yoke," thus, literally, the term means "joined together" or "yoked together."
>
> In the *M. v. H.* decision, the Supreme Court adopts the list of factors that must be considered in determining whether any two individuals are actually in a conjugal relationship from the decision of the Ontario Court of Appeal in *Moldowich v. Penttinen*. They include:
>
> - shared shelter (e.g., sleeping arrangements);
> - sexual and personal behaviour (e.g., fidelity, commitment, feelings towards each other);
> - services (e.g., conduct and habit with respect to the sharing of household chores);
> - social activities (e.g., their attitude and conduct as a couple in the community and with their families);
> - economic support (e.g., financial arrangements, ownership of property);
> - children (e.g., attitude and conduct concerning children);
> - the societal perception of the two as a couple.
>
> From the language used by the Supreme Court throughout M. v. H., it is clear that a conjugal relationship is one of some permanence, where individuals are interdependent – financially,

> socially, emotionally, and physically – where they share household and related responsibilities, and where they have made a serious commitment to one another.
>
> . . .
>
> **5.26 Assessment of conjugal relationships**
>
> . . .
>
> **a) Mutual commitment to a shared life to the exclusion of all other conjugal relationships**
>
> A conjugal relationship is characterized by mutual commitment, exclusivity, and interdependence and therefore cannot exist among more than two people simultaneously. The word "conjugal" includes the requirement of monogamy and, therefore, an individual cannot be in more than one conjugal relationship at one time. . . .
>
> **b) Interdependent – physically, emotionally, financially, socially**
>
> The two individuals in a conjugal relationship are interdependent – they have combined their affairs both economically and socially. The assessment of whether two individuals are in a conjugal relationship should focus on evidence of interdependency.
>
> The following list is a set of elements which, when taken together or in various combinations, may constitute evidence of interdependency. It should be kept in mind that these elements may be present in varying degrees and not all are necessary for a relationship to be considered conjugal.
>
> . . .

[41] These sections demonstrate how officers must weigh several factors to determine whether a relationship can be described as conjugal, and they do not primarily emphasize the sexual aspect of a relationship or the lack thereof. I note that section 5.25 of Manual OP 2 is unambiguous and that the word "conjugal" is not connected solely to "sexual relations" and

includes many other facets of a relationship. This is consistent with the legal authorities, and it is a reasonable interpretation of the sections of the IRPA.

[42] I agree that the officer did not, explicitly or implicitly, apply a preconceived definition of a conjugal relationship and that the decision on this aspect follows the various assessment criteria established by the law and by Manuals IP 8 and OP 2 and is therefore reasonable on this point.

(2) Is the decision unreasonable because the officer did not consider the positive evidence?

[43] Officers must assess all the complex aspects of a couple's relationship. I agree with Justice David Near, who stated as follows in *Valencia*, at para 24: "Determining whether a marriage is genuine, and assessing the true intentions of the parties as they entered into that marriage is a difficult task fraught with many potential pitfalls".

[44] Once again, the criteria set out by the Manuals provide useful guidelines for analyzing whether a conjugal relationship has been established, based on the evidence submitted. However, the officer cannot consider only the evidence that supports his or her conclusion; it must also be clearly stated in the decision that all the key items of evidence have been considered. As this Court explained in *Cepeda-Gutierrez v Canada (Citizenship and Immigration)* (1998), 157 FTR 35 at para 17,

> . . . the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains* v. *Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.) . . . .

[45] In the case at bar, the officer's decision was based on two crucial factors: emotional ties and financial ties. I agree that the officer's decision is unreasonable because she did not state how she dealt with the positive evidence regarding those two aspects. In her decision, the officer placed a great deal of emphasis on the negative points and did not address the positive evidence supporting Ms. Shumilo's position regarding her conjugal relationship with Ms. Desmarais. The officer overemphasized a few aspects of the evidence and did not state how she handled the other evidence which, in my view, are significant and relevant, in accordance with the law and the Manuals.

[46] Regarding the emotional ties, the officer noted a few relevant elements:

- The spouses sleep in separate beds, and the sponsor states that she has never entered Ms. Shumilo's room. But I note that Ms. Shumilo states, and the interview notes support this, that Ms. Desmarais's testimony is more nuanced—she says that she never entered Ms. Shumilo's room without being invited, out of respect for her spouse.
- They have a hard time communicating because Ms. Shumilo speaks Russian and Ukrainian but Ms. Desmarais speaks only English and French. The officer did not find it credible that they communicated through signs and other [TRANSLATION] "non-verbal" means before they bought the tablet that they now use.
- The officer also noted [TRANSLATION] "that when the applicant talks about her spouse, most of the time, she refers to her as her 'sponsor' rather than mentioning her name". I note that there are only two references to the "sponsor" in 72 entries in the interview notes.

- When questioned about pets, the sponsor talked about her animals, neglecting to mention Ms. Shumilo's cat. However, in the interview notes, Ms. Desmarais did name her spouse's cat. Both women gave nearly identical testimony on this topic.
- There are not many photographs in the record, and they all seem to have been taken within a short period of time. The officer [TRANSLATION] "notes that both the applicant and the sponsor have the same haircuts (same length, style, etc.)", but does not explain how such a comment is relevant. The photographs do not show that the spouses have been taking part in activities together or introducing themselves as a couple for a long time.

[47] Regarding the financial ties, the officer noted the following:

- The sponsor states that they never talk about finances. Both women gave an almost identical explanation for this decision, but the officer does not make any reference to it.
- They do not have a joint bank account. The sponsor pays the mortgage on the house, as well as the utility bills, internet service, etc., and Ms. Shumilo was not aware of the details regarding the amount of the mortgage or the names of the cable and internet service providers. Ms. Shumilo explained that she was not involved in these matters and that it was her granddaughter who had hooked up the internet for the spouses, which explains why Ms. Shumilo did not know the names of the service providers.
- When Ms. Shumilo needs something, she asks her granddaughter, rather than the applicant.

[48] In her decision, the officer does not address the positive evidence regarding these two aspects. For example, both women demonstrated detailed knowledge of each other's families—their sisters, brothers, children, etc.—including their names and where they live. They gave almost identical testimony regarding their first meeting and the evolution of their relationship, their day-to-day lives, and the details of their wedding anniversary celebrations. They explained why Ms. Desmarais decided to keep their finances separate. Furthermore, the officer neglected to mention that after they married, Ms. Desmarais took out a life insurance policy and named Ms. Shumilo as beneficiary. This factor is expressly noted in Manual OP2, but the officer makes no reference to it.

[49] I agree that the officer did not explain how she dealt with the positive, relevant evidence in her analysis. Moreover, she overemphasized a few negative aspects, for example, the "sponsor" references, which come up only twice in the notes, and the officer's opinion that there are [TRANSLATION] "many knowledge gaps" regarding their day-to-day lives, even though she does not refer to any evidence suggesting such gaps. The officer also made no reference to aspects on which the spouses gave almost identical testimony.

[50] It is true that the officer's analysis mentioned, in a very general terms, the guidelines established in the Manuals, and I must presume that the officer considered all the evidence in the record. However, we must look at whether the decision is reasonable, having regard to the IRPA and the facts in the record. If the officer has failed to explain how she dealt with the relevant, positive facts which run contrary to the decision she made, this is an error, as it is not possible to

connect the dots in her analysis when there are no dots on the page: see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11.

[51] This analysis leads me to the conclusion that the officer ignored, or at least did not explain how she dealt with, the considerable positive evidence. This is not an "intelligible, justified and transparent" analysis: see *Tamber v Canada (Citizenship and Immigration)*, 2008 FC 951; *Lin v Canada (Citizenship and Immigration)*, 2010 FC 659; *Doraisamy*.

[52] I note that it is not up to me to determine whether the relationship between Ms. Shumilo and Ms. Desmarais complies with the requirements of the IRPA and the IRPR. It is the responsibility of the immigration officer to do so. However, in exercising this duty, the officer must consider all the evidence and make a decision based on a "justifiable, transparent and intelligible" analysis, in accordance with the law and the facts.

[53] I also note that I must be mindful of the context in which the immigration officer must make a decision, and of the potential pitfalls in capturing the complexity of a conjugal relationship: *Valencia* at para 24. The Manuals exist to guide officers in their analyses. In the words of Justice Rothstein in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 85: "Although not law in the strict sense, and although they are liable to evolve over time as the context changes, thus giving rise to new requirements adapted to different contexts, guidelines are "a useful indicator of what constitutes a reasonable interpretation of the . . . section' (Baker, at para. 72)".

[54] In the case at bar, it must be noted that this Court has also stated that the Manuals are consistent with the case law: *Tang v Canada (Citizenship and Immigration)*, 2015 FC 973. In such circumstances, immigration officers could look to the Manuals for inspiration when explaining how the evidence lines up, or does not line up, with the analysis criteria stated in the Manuals.

IV. Conclusion

[55] I agree that the decision is unreasonable, but I do not accept the argument that the officer placed too much emphasis on the spouses' lack of sexual relations. There is no evidence of bias on the part of the officer or of a prejudice against atypical relationships. I have come to the conclusion that the decision is unreasonable because there is no explanation as to how the officer dealt with the evidence regarding several significant elements in the analysis.

[56] At the hearing, Ms. Shumilo proposed the following question for certification in accordance with paragraph 74(d) of the IRPA:

> [TRANSLATION]
>
> Should asexual conjugal relationships be expressly recognized as genuine relationships, in accordance with the *Immigration and Refugee Protection Act* and any other Canadian legislation?

[57] The respondent objected to the certification of this question because it is not a serious question of general importance and does not meet the criteria established by the case law.

[58] I agree with the respondent. The proposed question is not an appropriate one for certification, having regard to the case law: see *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46:

> This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 485 N.R. 186 at paras. 15, 35).

[59] In light of the preceding, Ms. Shumilo's application for judicial review is allowed. There is no serious question of general importance to be certified.

JUDGMENT in docket IMM-3686-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The matter is referred back to another officer for redetermination.

3. There is no serious question of general importance to be certified.

4. The style of cause is amended to name the Minister of Citizenship and Immigration as the appropriate respondent.

"William F. Pentney"
Judge

Certified true translation
This 23rd day of November, 2018

Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3686-17
STYLE OF CAUSE:	LYUBOV YAKIVNA SHUMILO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MARCH 21, 2018
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	NOVEMBER 9, 2018

APPEARANCES:

Anne Castagner	FOR THE APPLICANT
Sylviane Roy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude légale Stewart Istvanffy Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT