

Federal Court



Cour fédérale

Date: 20200311

Docket: IMM-401-19

Citation: 2020 FC 365

Ottawa, Ontario, March 11, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ORLANDO LAIFATT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns the decision of an immigration officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) to deny an application for permanent residence under the Spouse or Common-law Partner in Canada Class. The Officer refused the application on the ground that the Applicant and his wife failed to provide sufficient evidence to establish

that they were in a genuine marriage and that it was not entered into primarily for the purpose of acquiring status or privilege under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”).

[2] The Applicant is a 76-year-old citizen of the United States. He married his long-time friend, Ms. Wing-Wan Chung, a Canadian citizen on January 6, 2017. In May 2017, the Applicant applied for permanent residence (“PR”) under the Spouse or Common-law Partner in Canada Class. In August 2019, the couple appeared for an interview. By decision dated January 3, 2019, the Applicant’s PR application was refused.

[3] On application for judicial review to this Court, the Applicant argues that the Officer failed to provide sufficient reasons to justify the decision and that the Officer made erroneous findings capriciously and perversely without regard to the evidence.

[4] For the reasons that follow, this application for judicial review is allowed.

II. **Facts**

[5] Mr. Orlando Laifatt (the “Applicant”) is a 76-year-old citizen of the U.S. He was born in Jamaica. The Applicant has known Ms. Wing-Wan Chung since 1966, when both of their families ran businesses across the street from each other in Jamaica. Ms. Chung is a 70-year-old Canadian citizen. The Applicant moved to Florida, U.S. in 1976, and Ms. Chung moved to Toronto, Ontario in 1974. After they moved away from each other, they stayed in touch through greeting cards and occasional phone calls over the ensuing decades.

[6] The Applicant came to Toronto in March 2002 to spend time with his mother, who had been diagnosed with terminal cancer. During this period, the Applicant reunited with Ms. Chung and the two began spending a lot of time together. By this point, each of them had been married, but divorced many years earlier. After the Applicant's mother passed away in August 2002, the Applicant and Ms. Chung began to move their relationship forward.

[7] In October 2003, the Applicant and Ms. Chung purchased a home in Markham, Ontario. The Applicant alleges that this is when they began living together in a conjugal relationship.

[8] The Applicant proposed marriage to Ms. Chung on July 10, 2016. On January 6, 2017, the couple married in Miami, Florida and held a wedding banquet. After the wedding, the Applicant and Ms. Chung had a week-long honeymoon.

[9] The Applicant submitted his application for PR under the Spouse or Common-law Partner in Canada Class on May 12, 2017. A sponsorship undertaking was filed on the same day and was referred from the Case Processing Centre to IRCC on August 21, 2018 for a review of the *bona fides* of the relationship between the Applicant and Ms. Chung. After a review of the file, the Officer was unable to conclude that the marriage was genuine, and an interview for the couple was scheduled.

[10] The Applicant and Ms. Chung appeared for an interview on November 30, 2018. After the interview and a review of the evidence submitted in support of their application, the Officer concluded that the Applicant and Ms. Chung had provided insufficient evidence to demonstrate

the genuineness of their relationship, the joining of their affairs, and their interdependency. The Officer was not satisfied that the Applicant was a spouse within the meaning of section 4 of the *IRPR*, and that the relationship was genuine and not entered into primarily for immigration purposes.

[11] By decision dated January 3, 2019, the Applicant's PR application was denied. The reasons for the decision were provided on February 13, 2019.

III. Relevant Provisions

[12] Subsection 4(1) of the *IRPR* reads as follows:

Bad faith

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

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

Mauvaise foi

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) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

b) n'est pas authentique.

IV. Issues and Standard of Review

[13] There are two issues on this application for judicial review:

1. Did the Officer fail to provide adequate reasons in the decision for refusal of the PR application?
2. Did the Officer err by ignoring and failing to consider the evidence?

[14] Prior to the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the reasonableness standard applied to the review of an officer's decision regarding an application for spousal permanent residence: *Gould v Canada (Citizenship and Immigration)*, 2017 FC 324 (CanLII) at para 12; *Douglas v Canada (Citizenship and Immigration)*, 2017 FC 703 (CanLII) at para 17. There is no need to depart from the standard of review followed in previous jurisprudence, as the application of the *Vavilov* framework results in the same standard of review: reasonableness.

[15] As for the adequacy of reasons, the Applicant submits that this issue of one of procedural fairness and thus should be reviewed on a correctness standard. The Applicant relies on a few cases for the proposition that the adequacy of reasons is an issue of procedural fairness— however, I note that these cases pre-date *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII) [*Newfoundland Nurses'*].

[16] In *Newfoundland Nurses'*, the Supreme Court clarified that adequacy of reasons is not a stand-alone basis for quashing a decision. The reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. Any challenge to the reasoning/result of the decision should be made within the reasonableness analysis (*Newfoundland Nurses'* at paras 15, 20-22; cited by *Sebastio v Canada (Immigration,*

Refugees and Citizenship), 2016 FC 803 (CanLII) at para 20). Post-*Vavilov*, the same principles apply.

[17] As noted by the majority in *Vavilov*, “a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker,” (*Vavilov* at para 85). Furthermore, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency,” (*Vavilov* at para 100).

V. Analysis

A. *Adequacy of Reasons: Parties’ Submissions*

[18] The Applicant submits that the Officer failed to provide adequate reasons, and in doing so, failed to provide justifications on why the Applicant and Ms. Chung were found not to be in a genuine marriage. The Applicant argues that a review of the decision does not reveal any analysis, finding, or reason that supports the Officer’s conclusion that the Applicant’s marriage was not genuine. The Applicant submits that the decision is mostly a summary of the interview, followed by an “abrupt conclusion”.

[19] The Applicant takes issue with how the Officer did not explain what was in the documentary evidence, or identify which parts of the Applicant’s interview led the Officer to draw the conclusion that the Applicant’s marriage was of bad faith. The Applicant submits that

the Officer made an unsubstantiated comment of being concerned about insufficient evidence, and failed to make efforts to clarify how and why the evidence was insufficient, or why the insufficient evidence led to the conclusions in the decision. There were a number of documents produced by the Applicant in support of his application, which further highlights the concern regarding the adequacy of the reasons.

[20] On the Officer's finding that the Applicant's marriage was one entered into primarily for immigration purposes, the Applicant submits that the Officer provided no explanation on how this conclusion was reached. The Applicant notes that he is a citizen of the U.S., who would have no apparent incentive to immigrate to Canada, other than to be reunited with his wife, Ms. Chung.

[21] The Respondent submits that while the Officer is obligated to ensure that reasons given for the decision reflect the rationale used to arrive at the decision and not just the factors considered, the Officer need not mention every piece of evidence that was before them.

[22] The Respondent submits that the reasons in this case clearly explain the refusal and allows the reader to understand how the Officer reached the conclusions. The Respondent submits that when viewed as a whole, the reasons adequately explain why the application was refused.

B. *Reasonableness of the decision: Parties' Submissions*

[23] The Applicant submits that the Officer erred by failing to properly consider the evidence. The Applicant argues that in the absence of any adverse credibility findings, the witness' testimony is presumed to be true, and that the events of the Applicant's marriage are documented by clear and convincing evidence. The Applicant points to the photographs, property ownership records, banking records, travel records, and testimonies from doctors, friends and relatives, which the Applicant contends illustrate a genuine relationship that goes back several decades.

[24] The Applicant raises concern with the fact that the Officer failed to make any references to the history of the relationship between the Applicant and the sponsor, and notes that the documentary evidence was not discussed or analyzed in a substantial manner. The Applicant argues that the Officer ignored important evidence establishing the history of the relationship.

[25] The Respondent submits that the Officer considered and weighed all of the evidence and found that the Applicant failed to demonstrate that the marriage was genuine and not entered into primarily for immigration purposes based on a lack of evidence of cohabitation and interdependency. The Respondent argues that the Applicant's argument is a request for this Court to reweigh the evidence.

[26] The Respondent notes that there is a presumption that the Officer has taken into account all the evidence before them (*Sidhu v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15382 (FC) at para 15).

[27] The Respondent takes issue with the Applicant's characterization of the evidence as sufficiently establishing that the relationship between the Applicant and Ms. Chung was genuine and not entered into primarily for immigration purposes. The Respondent's position is that this is an inaccurate characterization, as the majority of the evidence was simply lacking to establish that the couple was in a genuine relationship with cohabitation and intermingling of their affairs, resulting in a failure to establish the genuineness of their marriage.

[28] In my view, the Officer failed to provide adequate reasons and properly consider the evidence in the decision regarding the genuineness of marriage. What the Respondent characterizes as a list of reasons that support the Officer's finding that there is a lack of interdependency and comingling of affairs is a selectively hand-picked list of documents that ignore other portions of evidence, which support the Applicant's assertions of the comingling of affairs. However, the Officer failed to properly consider the evidence.

[29] Particularly, the Officer's reasons pertaining to the home purchased in 2003 raises concerns. During the interview, when the Officer inquired about the home purchase for the home in Markham, Canada, Ms. Chung noted that both names were not on the mortgage because the Applicant was not a Canadian citizen, but stated that he helped pay for the home.

[30] The pre-interview notes also include a list of documentation submitted on file prior to the interview. The notes reveal that there is a property listed under Ms. Chung's name, and an application to the Land Registrar, which lists Ms. Chung as a charger and the Applicant as a chargee. Although not a piece of determinative proof that the Applicant was a joint owner of the

Markham home, the land registrar application dated October 2003 was critical evidence that showed the Applicant had an interest in this particular home.

[31] In the reasons, the Officer refers to Ms. Chung's land transfer documentation for the Markham property that does not list the Applicant, but fails to mention the land registration application that does. As was stated by this Court in *Varatharajah v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 149 (CanLII) at para 25:

When directly relevant evidence is not considered or analyzed by a decision-maker, the door is opened to an inference that the decision-maker made an erroneous finding of fact without regard to the evidence or ignored contradictory evidence (*Cezair v Canada (Citizenship and Immigration)*, 2018 FC 886 (CanLII) at para 27). Of course, it is trite law that while the Board need not address all evidence, it must be alive to contradictory evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC)). Silence on evidence pointing to the opposite conclusion supports an inference that such evidence was overlooked (*Jalili v Canada (Citizenship and Immigration)*, 2018 FC 1267 (CanLII) at para 11).

[32] The same principles apply here with regard to the consideration of evidence. In this case, the Officer made findings of fact on the financial interdependency between the Applicant and Ms. Chung without regard to the evidence and failed to remain alive to contradictory evidence, despite having been in possession of directly relevant evidence.

[33] Additionally, the Officer failed to consider the cultural and life stage aspects of the Applicant and Ms. Chung in assessing financial interdependency and the genuineness of marriage. During the interview, the Officer was alerted to the fact that Ms. Chung's banking activities were managed mostly by her daughter, as Ms. Chung was retired. As the Applicant's

counsel noted during the hearing, given the situation of both parties being retired and advanced in age, the assessment of financial interdependency is different from that of a young couple who may have the need for a more interdependent financial relationship. The Applicant and Ms. Chung had been leading separate lives for many years, and had little reason to merge all their financial and banking activities.

[34] Furthermore, Ms. Chung explained that within the Chinese culture, they did not discuss personal finances. The Officer, however, was not alert to the consideration of evidence relating to age and cultural aspects, and failed to properly engage with the evidence.

VI. **Certified Question**

[35] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VII. **Conclusion**

[36] The Officer erred by failing to consider the evidence and failing to produce justified reasons to support the conclusion that the Applicant and Ms. Chung had entered into the marriage with the primary purpose of acquiring status or privilege under the *IRPA*. In particular, the Officer erred by ignoring directly relevant, contradictory evidence and in doing so, failed to weigh the evidence altogether.

[37] Thus, the Officer's decision is unreasonable. This application for judicial review is allowed.

JUDGMENT in IMM-401-19

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-401-19

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