Federal Court Cour fédérale

Date: 20200403

Docket: IMM-859-19

Citation: 2020 FC 485

Ottawa, Ontario, April 3, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

TOLULOPE ADEYINKA DUYILE
OLUWAKEMI EUNICE DUYILE
JADESOLA DANIELLE DUYILE
MOYINOLUWA RHODA DUYILE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This application for judicial review is brought pursuant to section 72 of the *Immigration and Refugee Protection Act,* SC 2001, c 27. It involves a January 8, 2019 decision [Decision] of

an Officer of the High Commission of Canada in Ghana that refused the Applicants' application for permanent residence.

[2] The Applicants request that the decision be quashed and remitted for redetermination before a different Officer.

[3] The application for judicial review is dismissed for the reasons that follow.

II. Decision under Review

A. *Context*

[4] The primary Applicant is Tolulope Adeyinka Duyile. She and her three children live in Nigeria and her children are included in this application. Throughout, I will refer only to the Applicant, as the issue centres around a decision about her relationship with Olubode Duyile [Mr. Duyile], a refugee in Canada and the father of her children. They are not legally married; however, the Applicant and her children use Mr. Duyile's surname.

[5] Mr. Duyile is a refugee in Canada who gained protection based on the risk to his person in Nigeria as a gay man. He submitted an application for permanent residence in Canada afterward, which included the Applicant and her three children. Mr. Duyile is the father of these children.

B. *Decision under review*

[6] Section 176 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] allows for "family members" to be included in an application for permanent residence for certain protected persons. *IRPR* s 1(3) provides that a "family member" includes a common-law partner and their dependent children. However, *IRPR* s 4 provides that only genuine relationships qualify.

[7] An Officer in Ghana interviewed the Applicant on January 8th, 2019 and found that she did not meet the requirements to be included under Mr. Duyile's application because her alleged common-law relationship with him was not genuine.

[8] The Applicant presented a number of different pieces of evidence in support of her application, including identification documents, screenshots of text conversations, phone call records, and other assorted records concerning her and the children.

[9] The GCMS notes reveal that the Officer interviewed the Applicant and stated the following concerns about the genuineness of the Applicant's alleged common-law relationship:

- They had a break in their relationship;
- The relationship was not monogamous and Mr. Duyile may be involved with others in Canada;
- There is little evidence that Mr. Duyile pays the Applicant's rent as claimed;
- The evidence of the communication between the Applicant and Mr. Duyile is low quality and of limited substance;
- The Applicant has limited knowledge of Mr. Duyile's past life;

- The Applicant did not know of the Mr. Duyile's two children in Canada; and
- The Applicant and Mr. Duyile do not have long-term plans together.

[10] The Applicant was allowed to respond to these concerns. However, the Officer refused the application because of the limited evidence presented. She noted that the relationship lacked "substance and commitment". She also discontinued the dependent children's applications because the Applicant indicated that she had custody over the children and would not let them live in Canada without her.

III. Issues and Standard of Review

[11] The Applicant alleges a number of errors, but generally argues that the Officer's findings arose from a "perverse and capricious" assessment of the totality of the evidence and that the Officer breached procedural fairness. The Applicant states that many of the Officer's findings are unreasonable.

[12] The Respondent argues that the decision was reasonable.

[13] The Respondent, in its further arguments, also argued that the former applicant—who was Mr. Duyile—did not have appropriate standing to bring the application, but this has been remedied by Justice Pentney's January 15, 2020 Order that amended the style of cause to only include the Applicants. Accordingly, it is no longer at issue.

[14] There are two issues to consider:

A. *Was the Decision reasonable?*

B. *Was the Decision procedurally fair?*

[15] The parties agree that the applicable standard of review is reasonableness. I agree that reasonableness is the applicable standard of review. Reasonableness is now the presumptive standard of review, and I see no exception here that would rebut it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[16] Questions of procedural fairness continue to attract a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

IV. Parties' Positions

A. *Was the Decision reasonable?*

(1) Applicant's Position

[17] The Applicant makes a number of allegations throughout her arguments, including that the Officer, *inter alia*, decided without regard to the totality of the evidence before her, speculated, and made unwarranted inferences.

[18] The Applicant alleges that the Officer erred on multiple fronts: she ignored evidence, including that the Applicant's children were included in the decision; she did not properly consider the "overwhelming" documentary evidence about the photos of her and Mr. Duyile; she

improperly found that they did not have a common-law relationship; she improperly considered the text messages between the parties; she improperly found that the Applicant had, "limited knowledge about applicant and his past life"; she improperly did not consider the children's applications because she had full custody of them and would never leave them; she did not consider the best interests of the children. The Applicant does not cite any legal precedent throughout these arguments.

(2) Respondent's Position

[19] The Respondent submits that the Applicant seeks a reweighing of the evidence. It cites *Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 346, A-987-84 (FCA) for the proposition that this does not form a basis for judicial review.

[20] On the Applicant's arguments about considering the children in the Officer's Decision, the Respondent argues that this is not a determinative factor in assessing the genuineness of a marriage. It also submits that the Applicant was the one that told the Officer that she had custody of the children, as opposed to joint custody with Mr. Duyile. With the information available, the Officer reasonably saw no need to process the children's applications.

[21] Finally, the Respondent argues that the Applicant's request for a "best interests of the child analysis" is unfounded. The Applicant indicated no problems in Nigeria and that the children have always lived with her.

B. *Was the decision procedurally fair?*

(1) Applicant’s Position

[22] The Applicant claims that the Officer breached procedural fairness because she misunderstood her evidence and did not give her an opportunity to respond to the Officer’s doubts.

(2) Respondent’s Position

[23] The Respondent argues that the Applicant was granted an interview and given the opportunity to respond to the Officer’s concerns, so there was no breach of procedural fairness.

V. Analysis

A. *Was the Decision reasonable?*

[24] After reviewing the Decision, the materials before the Officer, and the arguments of both parties, I am of the view that the Decision was reasonable.

[25] Section 4(1) of the *IRPR* reads:

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	a) visait principalement l’acquisition d’un statut ou

any status or privilege under the Act; or	d’un privilège sous le régime de la Loi;
(b) is not genuine.	b) n’est pas authentique

[26] I am persuaded by the Respondent’s submissions that the majority of the Applicant’s arguments are merely requests for a reweighing of the evidence or disagreements with the Officer’s conclusions. These assertions do not produce a reviewable error (*Vavilov* at para 125). Here, I speak mainly of the Applicant’s arguments with regard to the submitted photographs, the text messages, and her interview responses. Having reviewed this evidence, the Officer appears to have considered and weighed it, which is all that was required. The Officer’s notes are relatively detailed and indicate the decision-making process of the Officer.

[27] I see nothing that indicates that the Officer did not consider the totality of the evidence. Further, the fact the Applicant and Mr. Duyile have had children together is not determinative that a genuine relationship exists. It is merely one factor amongst many for the Officer to consider. The Applicant has provided no authority on why a “best interests of the child” analysis was necessary, given that the common-law relationship was found to be non-genuine.

[28] I take minor issue with the Officer’s comments at the end of the notes regarding discontinuing the children’s applications. The Officer noted: “No further processing of the dependents on this file as applicant has custody of the children and she would not let them live in Canada without her”. The only evidence that the Applicant had custody of the children was her words at the oral hearing which indicated that the children “have always lived with her and that she would always want to live with her children”. Perhaps the Officer could have sought some

clarification on the precise legal nature of the custodial arrangements. However, the evidence before the Officer indicated that she was not willing to be separated from her children which the Officer was reasonably open to infer that there was a lack of consent to allow the children's applications to be processed without hers (*Sati v Canada (Citizenship and Immigration),* 2019 FC 1625 at para 4).

[29] However, I find that the Officer's statements in this regard did not go so far as to taint the overall decision, which centred on the genuineness of the relationship. Since there was a determination made that there was no common-law relationship, the Applicant was never a family member that qualified under section 176(2)(a) of IRPA.

B. *Was the decision procedurally fair?*

[30] I am persuaded by the Respondent that there was no breach of procedural fairness. The Applicant was able to attend an oral interview and respond to the Officer's concerns. In these circumstances, nothing further was required.

VI. Conclusion

[31] The application for judicial review is dismissed.

[32] The parties did not propose a question for certification, and, in my view, none arises.

[33] There is no order for costs.

JUDGMENT in IMM-859-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

3. There is no order for costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-859-19
STYLE OF CAUSE:	TOLULOPE ADEYINKA DUYILE OLUWAKEMI EUNICE DUYILE JADESOLA DANIELLE DUYILE MOYINOLUWA RHODA DUYILE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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