Federal Court Cour fédérale

Date: 20240103

Docket: IMM-8074-21

Citation: 2024 FC 5

Toronto, Ontario, January 3, 2024

PRESENT: Justice Andrew D. Little

BETWEEN:

NIKOLOZ CHAKHNASHVILI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant filed this judicial review application seeking to set aside a decision by an officer denying his application for permanent residence under the Spouse or Common Law Partner in Canada class in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *"IRPR"*).

[2] The officer determined that the applicant had misrepresented that he had a biological child with his sponsor (wife). The officer concluded that the applicant had not submitted sufficient evidence to show that their marriage was one of substance and not entered into primarily for the purposes of acquiring immigration status and privilege in Canada under subsection 4(1) of the *IRPR*.

[3] For the reasons that follow, I conclude that the officer's decision was reasonable. The application must therefore be dismissed.

[4] A chronology of events will set the scene for the officer's decision. It is taken from the record, including the officer's notes entered into the Global Case Management System ("GCMS").

[5] The applicant is a citizen of Georgia who arrived in Canada in April 2015. He claimed protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*), which was denied. He did not appear for a scheduled removal on March 1, 2016. An arrest warrant was issued in 2016. On October 4, 2021, the applicant turned himself in and was arrested.

[6] Meanwhile, in 2018, the applicant met his future wife. She is a Canadian citizen who is also originally from Georgia. She was separated from her previous husband and they divorced in November 2019.

[7] The applicant and his wife began to cohabitate in January 2020 and married on March 1, 2020.

[8] On May 20, 2020, the applicant filed an application for permanent residence with his wife as the sponsor. The applicant filed a note from a physician stating that he and his wife were expecting a baby, due in early September 2020. The child, D, was born in August 2020. The applicant's wife's sponsorship forms also referred, in handwriting, to "additional proof" filed to show that she and her husband were expecting a baby.

[9] After reviewing the application for permanent residence, an officer sent a so-called "procedural fairness" request to the applicant by email on October 4, 2021, asking for additional information including a copy of the birth certificate (long format) for any children he may have with his spouse or from any other relationship. The officer's email advised that the officer was not satisfied that the applicant and his wife had been cohabitating in the same residence in a conjugal relationship. It also advised that the applicant had not satisfied the officer with sufficient credible and substantive information and evidence that his marriage was one of substance and not entered into primarily for the purpose of acquiring immigration status and privilege in Canada. The email advised that the officer was not satisfied that the applicant met the requirements of the Spouse or Common Law Partner in Canada class. The email also asked for additional proof and documentation of the couple's cohabitation and relationship.

[10] On October 14, 2021, the applicant's counsel submitted additional information, including a birth certificate for D issued on September 27, 2020, that did not list the names of the child's (biological) parents.

[11] By email on October 20, 2021, the officer asked again for a copy of birth certificates (long format) for any children the applicant may have with his spouse or from any other relationship. The email expressly requested D's long format birth certificate and noted that the filed birth certificate for the couple's child did not display or have parents' names. The email also noted that the couple's child's family name appeared to be the sponsor's first husband's family name.

[12] In response, the applicant provided the Statement of Live Birth for D, issued on September 27, 2020 (the same date as the birth certificate). The Statement of Live Birth listed the applicant's wife's ex-husband as D's (biological) father. The applicant also submitted a typewritten letter from his wife dated October 21, 2021. The letter confirmed that D was not the applicant's biological child. It advised that she had made a huge mistake by spending a night with her ex-husband while she was in a relationship with the applicant.

[13] The officer's decision letter to the applicant dated October 28, 2021, and the officer's GCMS entry the same day, stated two principal conclusions. The first was that the applicant and his wife had falsely claimed that D was their common biological child, a misrepresentation that could have resulted in an error in the administration of the *IRPA*. Second, the officer reviewed the information provided in response to the procedural fairness letter and concluded that there

was insufficient credible and substantive information and evidence that the marriage was one of substance and not entered into primarily for the purposes of acquiring immigration status and privilege in Canada. The applicant's request for permanent residence in the Spouse or Common Law Partner in Canada class was denied.

[14] On November 8, 2021, the applicant filed this judicial review application.

[15] The Court stayed the removal of the applicant by Order dated May 11, 2022: *Chakhnashvili v. Canada (Citizenship and Immigration),* 2022 CanLII 41572 (FC).

I. Preliminary Issues

[16] The applicant filed two affidavits on this application, one his own and the other from his wife. I agree with the respondent that the key contents of the affidavits are not admissible on this application. That evidence essentially goes to the merits of the officer's decision – specifically whether the marriage was and is genuine. These contents do not fall within any of the exceptions to the general rule that the record before this Court is limited to the materials before the decision maker: *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22 at paras 19-20; *Brink's Canada Limited v. Unifor,* 2020 FCA 56, at para 13.

[17] The respondent argued that the application should be dismissed because the applicant did not have clean hands – he was guilty of misconduct due to failure to appear for removal in 2015

and staying underground until 2021. I decline to do so. In my view, this application should be determined based on a review of the reasonableness of the officer's substantive decision.

II. Analysis

[18] The applicant submitted that the officer's decision was unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653. *Vavilov* contemplates that a reviewing court may set aside an administrative decision if the applicant demonstrates that it was unreasonable because it was not transparent, intelligible and justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 12-15, 83-85, 99-106, 125-128.

[19] Under subsection 4(1) of the *IRPR*, an applicant has the onus to demonstrate both that a marriage is genuine and that it was not entered into for the primary purposes of acquiring a status or privilege under the *IRPA*: *Ferraro v. Canada (Citizenship and Immigration)*, 2018 FC 22, at para 12; *Canada (Citizenship and Immigration) v. Moise*, 2017 FC 1004, at para 15. Failure to show either one will disqualify an applicant: *Joseph v. Canada (Citizenship and Immigration)*, 2023 FC 1067, at para 17.

[20] The applicant did not challenge these legal principles or argue that the officer's decision contained an error in law.

[21] The applicant's submissions focused on the evidence that should have led the officer to conclude that the applicant's marriage to his wife and sponsor was, in fact, genuine and not

entered to assist his application for permanent residence. However, I must apply the principles in *Vavilov*, which do not permit a reviewing court to come to its own conclusion on the merits or to reassess the evidence for itself. The applicant must show that the officer's decision failed to respect the legal constraints bearing on it, or fundamentally misapprehended or ignored material evidence in the record before the officer. See *Vavilov*, at paras 83 and 126-126; and, recently, *Joseph*, at paras 22-23, 26.

[22] The officer's GCMS entry set out the chronology and circumstances leading to the conclusion that the applicant misrepresented that he was D's biological father. In my view, the officer's conclusion on that issue was reasonable and open to the officer on the record as it concerned subsection 4(1) of the *IRPR* (the officer made no finding as to inadmissibility).

[23] I do not agree with the applicant that the officer did not consider the contents of the wife's explanation letter dated October 21, 2021, and her divorce certificate from her ex-husband. The GCMS notes show that the officer was aware that the applicant and the sponsor were legally married. As the officer's decision letter and GCMS notes both also recognized, the wife's letter confirmed that that D was not the applicant's biological child and that she told him immediately after learning she was pregnant – which was before he filed the application for permanent residence. The GCMS entry noted that the applicant and his wife had to be asked twice for the long format birth certificate for the "falsely claimed child" and that they provided partial information even though they had the long format certificate (issued the same day as the short form). Although the wife's letter explained briefly why they had not disclosed D's biological father to others, it did not explain why they did not file the long format birth certificate

in response to the officer's express request for it on October 4, 2021. In addition, it did not provide any additional details about the development or nature of their relationship before her pregnancy with D. The applicant has not shown that the contents of the letter required the officer to provide any additional explanation than was contained in the GCMS notes.

[24] I am also unable to agree with the applicant that the officer's decision was unreasonable for failure to account for all of the evidence or for being selective. The officer noted that the wife did not provide any detail about how the applicant was involved in her children's life. The officer considered their relationship relatively new, in that they met in 2018 and began to cohabitate only in January 2020 (i.e., shortly before they married on March 1 and then filed the permanent residence application in May). The officer's GCMS notes also confirmed that the officer examined the length of time that the applicant had spent in Canada, his original purpose for coming here, the circumstances of meeting his wife and the submissions concerning their relationship development. The officer described the evidence available to assess the relationship between the applicant and his wife as "sparse, at best". The contents of the officer's decision letter and GCMS notes, taken as a whole, persuade me that the officer reviewed the contents of the applicant's file, which included a marriage certificate for him and his wife, various photographs of the applicant, his wife and two children, a short statement from D's pediatrician, support letters from family members, a notice of assessment, a bank statement, various bills, and a tenancy agreement showing that the couple lived at the same address.

[25] Although the reasoning at the end of the GCMS notes was not lengthy or factually detailed, in my view it was open to the officer to reach the conclusions under subsection 4(1) of

the *IRPR* in the context of the officer's prior findings and conclusion on misrepresentation, and in light of the information filed by the applicant and his sponsor/wife.

[26] While the applicant's written submissions mentioned that the officer could have interviewed the applicant and his wife, he did not make submissions about procedural fairness.

III. Conclusion

[27] For these reasons, the applicant has not demonstrated that the officer's decision was unreasonable.

[28] The application must therefore be dismissed. Neither party raised a question to certify for appeal and none arises.

JUDGMENT IN IMM-8074-21

1. The application is dismissed.

2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8074-21
STYLE OF CAUSE:	NIKOLOZ CHAKHNASHVILI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 25, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	JANUARY 3, 2024

APPEARANCES:

Peter Chmiel	FOR THE APPLICANT
Ada Mok	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter Chmiel Barrister & Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT