Date: 20070529

Docket: IMM-4760-06

Citation: 2007 FC 522

Ottawa, Ontario, May 29, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

MENZIES MANKA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED REASONS FOR ORDER AND ORDER

[1] Can true love exist between an older Canadian born woman and a younger failed refugee? This is another case in which this Court has been asked to review a visa officer's decision to turn down a spousal sponsorship application. The officer believed Mr. Manka, the foreign national, was not to be considered a husband – and accordingly, a member of the family class, because, to use the language of section 4 of the *Immigration and Refugee Protection Regulations*, his marriage was "…not genuine and was entered into primarily for the purpose of acquiring any status or privilege of the Act."

[2] He, who hails from Zimbabwe, arrived in Canada in November 2001. His refugee claim was dismissed in April 2003. There is no indication that he sought leave for a judicial review of that decision, or that he sought a pre-removal risk assessment. In any event, there is a ministerial ban in place against returning failed refugees to Zimbabwe.

[3] Mr. Manka met his wife about two weeks before the negative decision. They married a year later in April 2004, but she only sponsored him some 18 months later. There were a number of factors mentioned by the visa officer in coming to her conclusion that the marriage was not genuine. One was that Mr. Manka had been married in Zimbabwe, and she was not satisfied with the certificate of divorce. One cannot be treated as a spouse under the Regulations if already married.

[4] Although satisfied that they lived under the same roof, she was of the view that the couple was not intimate, based on contradictions in the details of their daily lives, and their financial arrangements.

ISSUES

[5] The issues are:

a. The standard of review;

b. What constituted the decision?

c. The divorce;

d. Daily married life; and

e. Actual bias

a. The Standard of Review

[6] Although *Canada (Attorney General) v. Sketchley*, 2005 FCA 404, tells us that each administrative decision has to be considered in context, I am assuming the issues in this case should be reviewed on the standard of patent unreasonableness, the most difficult one for Mr. Manka to meet. I still consider the decision was based on conjecture, not inference, and so has to be considered patently unreasonable.

b. What constituted the decision?

[7] There was considerable debate in that when Mr. Manka asked for the decision he was given one page. Later the respondent included the notes of the officer leading up to that decision. It is not necessary to determine whether the notes of interview formed part of the decision, or whether they were something separate and apart, similar to a trial transcript. One way or another they had to form part of the tribunal record, and they amply demonstrate that the visa officer's conclusions were not based on factual inferences.

c. The divorce

[8] The officer was concerned because the divorce certificate was not signed and further provides that all the ancillary matters pertaining thereto were to be determined in the "main cause". Mr. Manka provided a certified copy of the divorce signed by the registrar of the High Court of Zimbabwe. This is exactly the type of document one would receive here. Although he, who was not in Zimbabwe at the time of the divorce, did not know what was meant by "ancillary matters", the order clearly states "a degree of divorce be and is hereby granted." There is a presumption that a document emanating from a foreign authority is what it purports to be. There was absolutely no basis for the inference that the divorce was not genuine.

d. Daily married life

[9] I cannot think that anything turns on the couple's difference of opinion as to whether five or six people attended the ceremony!

[10] The officer was concerned that although the couple shared a credit card, they did not provide documentary evidence that they had a common bank account and otherwise intermingled their assets. There are various ways in which bank accounts can be arranged, none of which would lead to a conclusion that the parties were not intimate. Having been married in Quebec, their post-marriage assets were co-owned because of the marital property regime of property of acquests. No questions were put in that regard. Even if they had taken out a pre-nuptial agreement and opted for the conventional regime of separation of property, no adverse inference could possibly be drawn therefrom.

[11] The officer was annoyed because although she asked for tax forms, and they brought many, they did not bring the one she wanted. Her recourse was to specify exactly what forms she wanted, not to hold that theirs was a marriage of convenience.

[12] The record reveals that confusing questions were asked to the spouses separately about where they kept their change. The officer seems to think that they would have a common pot. One said she kept her change in the kitchen, the other said he kept his on the dresser. There is no contradiction there.

[13] Apparently Mr. Manka forgot details of a trip to Ottawa. Trips to Ottawa were apparently a regular occurrence. A lapse of memory on a trivial matter is itself trivial.

[14] Finally, Mr. Manka was caught out in a lie. He said he quit his job while in fact he was fired. It was his wife who told the visa officer he was fired. She knew about it because she was emptying out his pockets in order to clean his pants, and found the note. That was a clear sign of intimacy.

[15] The fact that he lied about his job was not relevant to the issue which was the genuineness of the marriage. The lie had to have some relevance to the case at hand (*Awuah v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1873 (QL); *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1195).

[16] For these reasons I find the decision was based on erroneous findings of fact made in a perverse or capricious manner and without regard for the material at hand.

e. Actual bias

[17] Mr. Manka now claims that during his interview on 1 August 2006, the officer said to him, while his wife was not present, “I do not trust black people”. He received the notice of the negative decision two weeks later. The officer vehemently protests that allegation. She said she told him she did not trust him because he was proven to be a liar with respect to his job.

[18] It is not necessary for me to comment on this allegation of actual bias, save to point out that the allegation was only made after the negative decision.

[19] The Minister has until 24 May 2007 to propose a question for certification, and the applicant until 29 May 2007 to reply.

AFTERWARD

[20] These reasons were first issued to the parties on 16 May 2007. Subsequently, the Minister has informed the Registry he would not be proposing a question of general importance for certification. Consequently, these reasons are as they were first issued, save that I took the opportunity to correct a slip of the tongue at paragraph [19] and added the following order to my reasons.

ORDER

THIS COURT ORDERS that the application for judicial review is granted. The matter is sent back for redetermination before another visa officer. There is no question of general importance to certify.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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