

Federal Court



Cour fédérale

Date: 20120605

Docket: IMM-7806-11

Citation: 2012 FC 691

Ottawa, Ontario, June 5, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

NGOZI CHIMNERE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ngozi Chimnere (the Applicant) seeks judicial review of a refusal by an Immigration Officer (the Officer) to grant her application for permanent residence as a member of the family class because her marriage to the sponsor, Michael Chimnere, was not genuine or was entered into primarily for the purpose of acquiring an immigration status or privilege under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/ 2002-227 (the *Regulations*).

I. Background

[2] Michael Chimnere was accepted as a Convention refugee in Canada based on his involvement in a group seeking self-determination for the Ibo people and people of the Niger Delta Area in Nigeria on August 31, 2009.

[3] On October 31, 2009, he also applied for permanent residence status. As part of this application, he provided information regarding a family, including the Applicant and their two sons, Obinna and Okechukwu. Michael Chimnere initially asked that his application not be processed concurrently as he did not have sufficient money for their fees.

[4] On December 31, 2009, however, he submitted the documents and fees required for them when someone provided him extra money to do so.

[5] On December 14, 2010, the Applicant was interviewed by Canadian officials to address some concerns associated with the documentation provided in support of the application. By a notice dated the same day, the Applicant and Michael Chimnere were informed of the Officer's decision.

[6] The Officer concluded that the Applicant could not be granted permanent residence on the basis of her marriage to Michael Chimnere because it fell under subsection 4(1) of the *Regulations*.

The Officer concluded:

Based on your interview at our office and a review of the documentation submitted, I am not satisfied that your relationship

with your sponsor is genuine. You were advised of the concerns during your interview, but you were unable to satisfy me that they were unfounded. I am therefore not satisfied that your relationship was not entered into for the purpose of gaining entry to Canada. As a result, for the purpose of the regulations, you are not considered to be a member of the family class.

[7] Along similar lines, the Computer Assisted Immigration Processing System (CAIPS) notes indicate:

DO YOU HAVE THE MARRIAGE CERTIFICATE? PA PROVIDED SWORN DECLARATION DATED 15 JUNE 2010 FROM STATE OF ABJA, NIGERIA. ALSO PROVIDED WAS FORMC REGISTRATION # 07721 "ABIA STATE GOVT OF NIGERIA" CERTIFICATE OF REGISTRATION OF MARRIAGE." DOCUMENT WAS RECENTLY ISSUED, DATE COULD NOT BE ASCERTAINED.

[...]

BAPTISMAL CERTIFICATE FOR DEP SONS, OBINNA AND OKECHUKWU FROM THE METHODIST CHURCH IN UZGOKOLI, DATED 12 DAY OF JUL 1990 AND APR 5, 1992 RESPECTIVELY, BOTH APPEARED TO HAVE BEEN ISSUED RECENTLY, SAME HAND WRITING AND INK.

[...]

BOTH DEPENDANTS LOOKED MUCH OLDER THAN THEIR STATED AGE. THAT ASIDE, PA HAS NOT BEEN ABLE THROUGH OUR DISCUSSION OR DOCUMENTS TO DEMONSTRATE THAT SHE WAS IN FACT MARRIED TO CR SPOUSE.

PA HAS CONTENTED THAT THE ORIGINAL DOCUMENTS WERE DAMAGED WHILE BEING STORED UNDER THEIR BEDS AND NONE WERE SALVAGABLE. MARITAL RELATIONSHIP HAS NOT BEEN ESTABLISHED, APPLICATION REFUSED.

II. Issues

[8] The central issue raised is the reasonableness of the conclusions by the Officer regarding the Applicant's marriage.

III. Standard of Review

[9] As a factual determination, the genuineness of a marriage or whether it was entered into for the purposes of acquiring status is to be afforded deference under the reasonableness standard (see *Searles v Canada (Minister of Citizenship and Immigration)*, 2009 FC 996, [2009] FCJ no 1299 at para 10; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417, [2010] FCJ no 482 at para 14; *Yadav v Canada (Minister of Citizenship and Immigration)*, 2010 FC 140, [2010] FCJ no 353 at para 50).

[10] Applying that standard, the Court will only intervene absent justification, transparency and intelligibility or, put another way, an acceptable outcome defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

IV. Analysis

[11] The Applicant contends that the Officer's assessment was overly microscopic and speculative while ignoring evidence as to the bona fides of the marriage. In particular, she takes issue with the Officer discrediting much of the documentation submitted because it looked newly

issued and there was no indication as to the date of its creation. According to the Applicant, it was also speculative for the Officer to suggest that the Applicant and her sons looked older than their claimed age.

[12] With respect, I find no merit in these assertions. It appears eminently reasonable for the Officer to identify issues with the documents provided, namely that the date on the marriage certificate could not be ascertained and the baptismal certificates looked recently issued to the dependants in the same handwriting and ink. The Officer merely made an observation as to their ages in light of what was stated in the relevant documents.

[13] The Applicant was given an opportunity to address these issues during an interview but the Officer was still not satisfied as to the nature of their marriage relationship. Indeed, for the first time during the interview the Applicant attempts to explain the issues regarding the original documents having been damaged, ultimately raising further questions as to reliability of the evidence as submitted to the Officer. As the Respondent notes, the application was based primarily on these documents.

[14] The jurisprudence relied on by the Applicant is of limited assistance. While Justice Robert Barnes questioned reliance on trivialities or ambiguities in the assessment of a marriage in *Tamber v Canada (Minister of Citizenship and Immigration)*, 2008 FC 951, [2008] FCJ no 1183 at para 21; it was in relation to the particular circumstances where undue emphasis was placed on peripheral details in their testimony. By contrast, in the present case the Officer was addressing concerns related to documents central to establishing their marriage.

[15] Similarly, the Applicant's suggestion that the Officer relied on stereotypes in referring to age is not borne out by the context in which the observation was made in the CAIPS notes. The appearance of age was an additional factor to consider in light of various concerns already identified regarding the documents before the Officer. This is an entirely different scenario than the ones mentioned in cases cited by the Applicant in her memorandum.

[16] Relying on a Citizenship and Immigration Canada (CIC) Operational Manual (OP-2 Processing Members of the Family Class, November 14, 2006), the Applicant suggests that she should have been presented with the option of providing DNA evidence. I am inclined to agree with the Respondent, however, that DNA evidence would not necessarily establish the genuineness of the marriage, but merely whether the children are related to their parents. I also see no requirement for personal interviews with the sponsor and Applicant individually to ascertain their level of knowledge of one another. On the contrary, the Manual confirms that issues can arise with altered photographs and fraudulent documents and this represents a relevant concern for an officer in making a determination as in this instance.

[17] The Respondent highlights, and I concur, that the Applicant's submissions tend to shift the onus to the Officer in establishing that the marriage was genuine. The issue in this case was that the Applicant, and her sponsor in assisting with the application, failed to provide the documents or address concerns in response to questions so as to demonstrate their marriage did not fall under subsection 4(1) of the *Regulations*. The Applicant simply could not satisfy the Officer that the

concerns were unfounded in the course of the interview. Yet, the Applicant had the onus for doing so.

[18] Based on the evidence submitted and the concerns identified with the evidence as presented, the Officer was justified in calling into question the genuineness of the marriage and whether it was entered into primarily for the purpose of acquiring status.

V. Conclusion

[19] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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PLACE OF HEARING: TORONTO

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

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