

Federal Court



Cour fédérale

Date: 20140304

Docket: IMM-10549-12

Citation: 2014 FC 211

Ottawa, Ontario, March 4, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**WEHERAGODAGE DIMUTHU
GOPIKA PERERA
(A.K.A. W. DIMUTH GOPIKA PERERA)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

**REASONS FOR ORDER AND ORDER
(Reasons delivered orally from the bench November 21, 2013)**

[1] In a letter dated August 15, 2012 a visa officer (the Officer) refused the Applicant's application for permanent residence as a member of the dependant of the refugee class on the basis that his marriage in Canada to a successful refugee claimant was not genuine and was entered into primarily for immigration purposes.

[2] The issues will be set out and discussed below:

Issue 1

[3] The first issue is whether the Decision is unreasonable because it is alleged that the Officer ignored relevant evidence. The Officer focused on the fact that the couple began a relationship in early 2009 and married one month after the Applicant was told he was to be deported. The Applicant was advised of his requirement to leave on December 7, 2009. At that time he also received negative decisions on his outstanding H&C and PRRA applications. He married the Applicant on January 31, 2010.

[4] In focusing on these dates the Officer was able to conclude that the couple's relationship was relatively short lived and that the marriage only occurred in response to the Applicant's pending departure.

[5] However, the Officer failed to mention that, in June 2007, the Applicant's wife arrived in Canada, needed a place to live and heard that the Applicant was looking for a roommate. In July 2007 the Applicant and his wife began to share accommodation but just as roommates. The Applicant's wife made her refugee claim in August 2007. Early in 2008 the Applicant and his wife began to have romantic feelings for each other but they remained roommates and did not act on their feelings. In February 2009 the Applicant asked his wife to start a romantic relationship and she agreed, but it was not until August 2009 that the Applicant and his wife started to have a physical relationship. In September 2009 they told their parents about their relationship.

[6] On November 20, 2009 the Applicant and his wife applied for a marriage license. It is noteworthy that the decision to marry was made after the wife was granted refugee status and before the Applicant learned of his departure.

[7] The Applicant was given a deferral of removal to give him time to marry, and he cooperated with his deportation to Sri Lanka where he now resides. The couple has remained in communication and remain married.

[8] In my view, it was unreasonable for the Officer to fail to address the evidence which showed that the couple had a long standing relationship.

Issue 2

[9] The second issue concerns the genuineness of the marriage and the Officer's implausibility findings. The Officer did not accept the marriage because of an inconsistency she perceived in the evidence. On the one hand the Applicant stated that the couple ignored their cultural values when they entered into a sexual relationship before marriage, but on the other hand they followed tradition and asked their parents to choose their wedding date (the Inconsistency). This led the Officer to conclude that the marriage was not genuine. However, the Inconsistency was explained. The Applicant stated that they did not totally abandon their norms. Even after they became romantically involved they waited 6 months before beginning intimate relations because of their backgrounds. The Applicant testified that they could not help themselves.

[10] In my view this couple's behaviour does not demonstrate that their marriage is not *bona fide*. Rather it shows young people moving from roommates to friends to romance over a reasonable period. They are far from home and although responsive to their upbringing they were influenced by their Western surroundings and their proximity to one another.

[11] The evidence shows that the couple is proud of their relationship, told their families immediately, engaged them in their wedding plans, and asked them to set the wedding date in a traditional manner. In my view in all these circumstances it was not within the range of reasonable outcomes, to conclude based on the Inconsistency, that the Applicant's marriage is not genuine.

Certification

[12] There is no question for certification.

ORDER

THIS COURT ORDERS that:

The application is allowed and the matter is returned to another visa officer for reconsideration in light of these reasons.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10549-12

STYLE OF CAUSE: WEHERAGODAGE DIMUTHU
GOPIKA PERERA (A.K.A. W. DIMUTH GOPIKA
PERERA) v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 21, 2013

**REASONS FOR ORDER AND
ORDER:** SIMPSON J.

DATED: MARCH 4, 2014

APPEARANCES:

Sarah L. Boyd FOR THE APPLICANT

Stephen Jarvis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman, Nazami & Associates FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario