Federal Court  Cour fédérale

Date: 20150216

Docket: IMM-5356-14

Citation: 2015 FC 194

Ottawa, Ontario, February 16, 2015

PRESENT: The Honourable Mr. Justice S. Noël

BETWEEN:

JOVIS OSAS ABURIME

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the decision of A. Barker [the Officer] of Citizenship and Immigration Canada [CIC], dated June 25, 2014, which dismissed the application for permanent residence under the Spouse or Common-law Partner in Canada Class of Mr. Jovis Osas Aburime [the Applicant].

II. Facts

[2] The Applicant is a 24-year-old citizen of Nigeria.

[3] He made a refugee claim on May 6, 2009. The Applicant was subsequently arrested on May 12, 2009, and detained by the Canada Border Services Agency [CBSA] because of entering Canada improperly by using a passport that did not belong to him. He was released on May 14, 2009, on terms and conditions.

[4] The Applicant was then issued a work permit pursuant to section 206 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], valid until May 6, 2011, which was later extended until April 7, 2012.

[5] He submitted an application for permanent residence under the Spouse or Common-law Partner in Canada Class on February 8, 2011. This application was closed pursuant to section 126 of the Regulations on July 18, 2011, because his sponsor at the time withdrew her application for sponsorship.

[6] The Refugee Protection Division [RPD] rendered a decision declaring the Applicant not to be a Convention refugee or a person in need of protection on June 2, 2011. The application for leave and judicial review to this Court was granted on November 25, 2011. On January 9, 2012, upon consent of the parties, the application for judicial review was allowed; the RPD decision was set aside and remitted to a different RPD panel for redetermination. On October 12, 2012,

the RPD found the Applicant not to be a Convention refugee or a person in need of protection. The Applicant submitted an application for leave and judicial review of that decision to this Court, which was denied on April 10, 2013.

[7] On April 16, 2013, the Applicant's work permit was extended to April 9, 2016.

[8] The Applicant met Furaha Kasemire [the sponsor] on January 3, 2012. They were engaged on January 3, 2013, and married on June 1, 2013, in a civil ceremony and again on February 1, 2014, in a Christian ceremony.

[9] The Applicant made another application for permanent residence under the Spouse or Common-law Partner in Canada Class [the Application] along with an application for an open work permit on June 26, 2013.

[10] The Applicant and his sponsor were examined together and separately on June 4 and June 17, 2014, with regard to the application with the use of an interpreter.

[11] On June 25, 2014, the Officer found that the Applicant had neither shown that he meets the requirement of subsection 124(*a*) of the Regulations nor that he is a not a person described in paragraph 4(1)(*a*) of the Regulations. The application was therefore denied. This is the decision under review.

III. Impugned Decision

[12] The Officer considers the documents presented supporting the marriage between the Applicant and his sponsor along with the documentation regarding the sponsorship itself. The Officer finds that the sponsor meets the eligibility requirements to sponsor the Applicant as a member of the Family Class.

[13] With regard to the marriage between the Applicant and his sponsor, the Officer notes that their engagement took place after the Applicant was found not to be a Convention refugee or a person in need of protection by the RPD and that the civil marriage took place after this Court denied the application for leave and judicial review. This timing is said to be questionable by the Officer. The evidence however demonstrates that the Applicant and his sponsor share shelter.

[14] Regarding the financial aspects of the application, the Officer concludes that the Applicant and his sponsor have not significantly pooled their financial resources. Their social affairs are also deemed not to have been significantly combined. After evaluating the documents presented to CIC by the Applicant, the lack of genuineness of the documents presented by the Applicant along with the credibility concerns with regard to the explanations given by the Applicant regarding those documents, the Officer questions the credibility of the Application as a whole and consequently his motivation for marrying his sponsor. The Applicant's immigration history was also taken into consideration.

[15] On a balance of probabilities, the Officer concludes that the Applicant's marriage was entered into primarily for the purpose of acquiring any status or privilege under IRPA and, more specifically, permanent residence status in Canada.

IV. Parties' Submissions

[16] The Applicant submits that the Officer failed to give credit to the Applicant and his sponsor's courtship and dating prior to their engagement and subsequent marriage and erred when evaluating the Applicant and his sponsor's financial affairs based on the evidence submitted. The Applicant also argues that the Officer erred in its evaluation of the Applicant's social life as a couple and knowledge of each other's lives. The Applicant is also of the opinion that the Officer is substituting its own views, "feelings" and prejudice on the matter. Moreover, the Officer repeatedly attempts to discredit the Applicant by making numerous references to his immigration history in Canada and how he entered Canada. The Applicant's way of entry in Canada has no bearing on the marriage between the Applicant and his sponsor.

[17] The Respondent retorts to the Applicant's arguments by stating that he is merely disagreeing with the Officer's assessment of the evidence and is asking this Court to reweigh the evidence. The Officer identified inconsistencies and implausibilities in the evidence presented and found the Applicant not to be credible. The Respondent argues that the Applicant did not demonstrate that his marriage was not entered into for immigration purposes and the Officer did not err in considering the Applicant's immigration history in rendering its decision.

V. Issue

[18] I have reviewed the parties' records and respective submissions and there is only one issue to address:

1. Did the Officer err in concluding that the marriage was entered into primarily for immigration purposes?

VI. Standard of Review

[19] The question of whether or not the Officer erred in concluding that the marriage was entered into primarily for immigration purposes is a factual determination and attracts the reasonableness standard (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417 at para 14 [*Kaur*]; *Mendoza Perez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1 at para 22 [*Mendoza*]). The Court shall only intervene if it concludes that the decision is unreasonable, and falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VII. Analysis

[20] Subsection 124(*a*) of the Regulations explains that a "foreign national is a member of the spouse or common-law partner in Canada if the foreign national is the spouse or common-law partner of a sponsor and cohabits with that sponsor in Canada." Subsection 4(1) of the Regulations however highlights the conditions under which a foreign national will not be considered a spouse. To make a determination under subsection 4(1), the Officer must determine

whether the marriage was either entered into primarily for acquiring status or privilege under IRPA, or is not genuine (*Singh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1077 at para 5 [*Singh*]; *Dalumay v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1179 at para 25 [*Dalumay]*). The application can therefore be denied if the Officer is satisfied that the Applicant's marriage is not genuine or was entered into primarily for acquiring status or privilege under IRPA (*Gill v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1522 at para 29 [Gill]). After reviewing the parties' records and their respective submissions, I find the Officer's decision reasonable.

[21] The Applicant argues that the Officer committed an error by misconstruing the evidence of the Applicant and his sponsor's relationship. Although I acknowledge that the Applicant and his sponsor met on January 3, 2012, before the Applicant had his refugee claim denied, the Officer was entitled to consider that the Applicant and his sponsor were engaged on January 1, 2013 and married on June 1, 2013, after the negative decision of the RPD dated October 12, 2012 (*Khera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 632 at para 10 [*Khera*]; *Keo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1456 at para 23 [*Keo*]). The Officer did not make an error by stating that the timing of both the engagement and the marriage to be questionable. It was open to her to draw such a conclusion as it is seen above. The fact that they met on January 1, 2012, does not make such finding erroneous.

[22] As for the financial, social and emotional affairs of the Applicant and his sponsor, the Applicant is essentially asking this Court to reweigh the evidence. However, on a judicial review, it is not the role of this Court to reweigh the evidence and replace the Officer's reasoning

with a conclusion preferable to the Applicant (*Valencia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 787 at para 33 [*Valencia*]). Here, the Officer properly evaluated all the evidence presented and commented on each document and information provided in coming to her conclusion that the Applicant and his sponsor had not sufficiently combined their financial, social and emotional affairs. Indeed, the Officer was not satisfied from the evidence that the joint bank account was not opened primarily for the purpose of the Applicant's application (Applicant's Record [AR], page 10). The Officer also noted that the Applicant submitted an undated and unsigned letter from a friend in support of his application, which led the Officer to conclude that this letter was self-serving evidence (AR, page 11; Certified Tribunal Record [CTR] at page 277). Moreover, the Officer also discussed how this was not the Applicant's first application (AR, page 11) and that the sponsor lacked knowledge with respect to some aspects of the Applicant's background (AR, page 12). Having said that, some of the findings made, such as the one concerning the fact that they had no will, the "selfies" photos of the couple, and the one on life insurance are not the soundest, but when I read the other findings made, which have solid substance, I do conclude that they make this decision as a whole reasonable.

[23] Lastly, the Applicant's argument that the Officer repeatedly tries to discredit the Applicant by bringing up his immigration history cannot hold. Indeed, this Court has held that an Officer can consider an applicant's immigration history in assessing the bona fides of a marriage, but that it is not a determinative factor (*Enright v Canada (Minister of Citizenship and Immigration)*, 2013 FC 209 at para 46 [E*nright*]; *Elahi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 858 at para 18 [*Elahi*]; *Thach v Canada (Minister of Citizenship and Immigration)*, 2008 FC 658 at para 26 [*Thach*]). In the case at bar, the Officer did consider the

Applicant's immigration history along with numerous other factors in concluding that the Applicant entered into marriage primarily for the purpose of acquiring status. Not only did the Officer considered the factors discussed above, but the documents presented to CIC were also evaluated. The Officer commented on all of the documents and suspected his Nigerian birth certificate dated 11 November 2008, to be fraudulent (AR, page 13) and his Attestation of Birth to be self-serving evidence (AR, page 14). Moreover, when asked how many times he had been married, the Applicant responded that he had been married twice, to his current sponsor and to his previous sponsor who withdrew her sponsorship. However, when the Applicant expressed his intention to make a refugee claim in April 2009, a search of CIC records showed a record of a refusal dated August 13, 2008, by the visa office in Lagos, of an application for a temporary visa made by "Jovis Osas Aburime" (CTR at pages 34-38). This application contains the same name and the same date of birth of the Applicant, along with the Applicant's photograph and the name of his parents. Included in this application were the names of the Applicant's spouse (J. Aburime) and a child (L. Aburime). When asked about this application, the Applicant could not provide a satisfactory answer to the Officer. The evidence also shows that without the knowledge of his wife, he had applied for a passport at the Nigerian High Commission when he travelled to Ottawa in March 2014. All of this could only impact the credibility of the Applicant.

[24] Therefore, when read as a whole, the decision is reasonable. The Officer properly considered all the necessary factors and provided a detailed analysis for each piece of information and documents presented. Some of the findings listed above are weak, but they do not render this decision unreasonable. The intervention of this Court is not warranted.

VIII. Conclusion

[25] The decision of the Officer, when read as a whole, is reasonable. She properly concluded that the Applicant has not met his onus of proof that, on a balance of probabilities, the marriage was not entered into primarily for the purpose of acquiring any status or privilege under IRPA as per subsection 4(1) of the Regulations. The judicial review is dismissed.

[26] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Simon Noël"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5356-14
STYLE OF CAUSE:	JOVIS OSAS ABURIME v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	FEBRUARY 12, 2015
JUDGMENT AND REASONS:	NOËL S. J.
DATED:	FEBRUARY 16, 2015

APPEARANCES:

Malvin J. Harding	FOR THE APPLICANT
Matt Huculak	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Malvin J. Harding Barrister & Solicitor Surrey, British Columbia	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT