

Federal Court



Cour fédérale

Date: 20161118

Docket: IMM-4916-15

Citation: 2016 FC 1283

Toronto, Ontario, November 18, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

FENGYING MA

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Ma is a citizen of China. She arrived in Canada in 2004 and made a claim for protection. The claim was ultimately denied in April 2006. She is a licensed holistic therapist and has owned several businesses since arriving in Canada.

[2] After the claim for protection was denied, Ms. Ma pursued a Humanitarian and Compassionate [H&C] application and also applied for a Pre-Removal Risk Assessment [PRRA]. The record indicates that the H&C application and the PRRA were refused and that these processes were completed in late 2011.

[3] In 2007, Ms. Ma met Mr. Wilson, a Canadian citizen. They have cohabited since 2008 and married in 2010. In 2010, Mr. Wilson submitted an in-land spousal sponsorship application on behalf of Ms. Ma. The application was initially denied but on agreement of the parties was returned for redetermination.

[4] The spousal sponsorship application was denied for a second time in October 2015. The Citizenship and Immigration Officer [Officer] was not satisfied that the marriage was genuine and not entered into primarily for immigration purposes. It is that decision that is now before the Court.

[5] Ms. Ma argues that the Officer: (1) engaged in questioning that gives rise to a reasonable apprehension of bias; (2) rendered an unreasonable decision by relying on peripheral issues in determining the marriage was not genuine; (3) engaged in unwarranted speculation and relied on extraneous, irrelevant and capricious considerations; and (4) erred in determining that the marriage was not genuine. She asks that the negative decision be set aside and the matter be returned for redetermination by a different Officer.

[6] I am not convinced that the record discloses either personal or institutional bias as alleged. However, I am of the opinion that the transparency, justifiability and intelligibility of the decision is undermined by the Officer's failure to address and express why the documentary evidence corroborating cohabitation did not outweigh the evidence relied on in support of the negative decision.

II. Standard of Review

[7] In considering the genuine nature of Ms. Ma's marriage, the Officer was engaged in a predominately factual determination attracting a reasonableness standard of review (*Doraisamy v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1053 at para 44 citing *Valencia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 787 at para 15 and *Kaur v Canada (Minister of Citizenship and Immigration)*, 2010 FC 417 at para 14). The Court owes significant deference when reviewing an Officer's decision engaging findings of mixed fact and law. However, where a decision lacks the transparency, intelligibility and justifiability necessary to allow the Court to determine if the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law, the Court will intervene (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

III. Analysis

A. *Did the Officer's failure to directly address contradictory evidence render the decision unreasonable?*

[8] In refusing Ms. Ma's application, the Officer identified a number of concerns with the evidence provided by Ms. Ma and her husband, Mr. Wilson. The concerns included:

- A. Mr. Wilson not knowing his home telephone number, explained on the basis that he does not call himself and the calls are forwarded to his cell phone;
- B. The absence of Mr. Wilson's name on the ownership documents of the claimed marital home and inconsistent explanations for why this was the case;
- C. Ms. Ma's lack of knowledge of Mr. Wilson's other real estate holdings;
- D. Inconsistent information relating to how the couple met;
- E. Limited involvement with and knowledge of adult children from prior relationships; and
- F. Inconsistent answers relating to their involvement with Falun Gong.

[9] As a result of these concerns, the Officer concluded that "...the applicant and her sponsor may have a business relationship... [h]owever, considering the given circumstances, credibility concerns and the discrepancies identified in the information the applicant and her sponsor

provided, I am not satisfied that this is a bona fide marriage and not one entered into primarily for immigration purposes.”

[10] In reaching this conclusion, the Officer noted that additional documentation was provided at the interview in support of the claim that the marriage was genuine, including tax statements, financial documentation, divorce certificates, affidavits and photos. Other than acknowledging receipt of this documentary evidence, the Officer did not address it in any way.

[11] The documentation provided to the Officer demonstrates that Ms. Ma and Mr. Wilson hold a joint bank account and the account appears to be regularly used. The documentation reports that Ms. Ma and Mr. Wilson share the same home address on (1) tax documentation; (2) banking documentation; (3) cellular phone accounts; (4) health care documentation; and (5) automobile insurance documentation. In addition, the Officer was provided with a number of letters that purport to attest to the genuineness of the relationship. All of this evidence appears corroborative of the claim that Ms. Ma and Mr. Wilson are in a genuine relationship. However, none of the documentation is addressed in the Officer’s decision. Nor is it evident in reviewing the record that the Officer actively considered this evidence.

[12] It is true that a decision-maker is not required to address each piece of evidence and is presumed to have considered all the evidence placed before him or her. However, where directly contradictory evidence is not addressed by a decision maker a Court may more readily conclude that the decision-maker reached a determination without regard to the evidence before it

(*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17).

[13] In this case, I am not suggesting that the evidence is in itself determinative of the genuine nature of the marriage. However, it is, in my opinion, directly relevant to the analysis the Officer was undertaking. The Officer's failure to address this evidence undermines the transparency, intelligibility and justifiability of the decision. The reasons do not disclose how or even if, the Officer weighed this evidence against the negative credibility findings upon which the determination was based. This, in my opinion, is a reviewable error warranting the intervention of the Court.

IV. Conclusion

[14] For the reasons set out above, I conclude that the failure to directly address contradictory evidence undermines the transparency, intelligibility and justifiability of the decision. I am therefore unable to conclude that the determination reached falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[15] The parties have not proposed a question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted, the matter is returned for redetermination by a different decision-maker. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Theodora Joan Karen Oprea FOR THE APPLICANT

Gordon Lee FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Adela Crossley FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

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