

Federal Court



Cour fédérale

Date: 20171213

Docket: IMM-5119-16

Citation: 2017 FC 1137

Ottawa, Ontario, December 13, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

GRACE OLUWASEUN OKUNEYE ASHIRU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Ms. Ashiru is a citizen of Nigeria. Her spouse, Prince Olugbenga Ashiru, sought protection in Canada on the basis that he feared persecution in Nigeria due to his sexual orientation. His claim was accepted in July 2015. Mr. Ashiru then initiated an In-Canada application for permanent residence naming Ms. Ashiru, the Applicant, and their three children as family members.

[2] In June 2016, Ms. Ashiru submitted an application for a permanent resident visa as a member of the family class. In November 2016, after providing procedural fairness letters, the application for permanent residence was denied. The Officer was not satisfied that the marriage was genuine.

[3] Ms. Ashiru brings this application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. She argues the decision was unreasonable as the evidence established the marriage was valid in law and genuine.

[4] The reasons for the negative decision are set out in the Global Case Management System [GCMS] notes, which state:

In his submission on his BOC, In-Canada applicant refers to having a same-sex partner. In-Canada applicant has had various relationships with different men prior to and throughout his claimed marriage with applicant. Prior to In-Canada applicant arriving in Canada the relationship between applicant and In-Canada applicant was strained and unhappy. There is very limited evidence that applicant and In-Canada applicant are legally married. At the time of In-Canada applicant's TR application he declared he was single. This would imply the relationship between applicant and In-Canada applicant was over. In-Canada applicant did not see himself as married. Applicant is not in agreement with In-Canada applicant's lifestyle and wants him to change. Applicant fled to Canada because of his sexuality. He is free now to live his life as he pleases. The evidence of communication is limited. There is very limited evidence of an ongoing relationship. I am not satisfied applicant and In-Canada applicant are in a committed, mutually exclusive relationship. I am not satisfied the relationship between applicant and In-Canada applicant is genuine. [Emphasis added.]

[5] It is evident from the underlined portion of the GCMS notes that the declaration attributed to Mr. Ashiru to the effect that he was single at the time he sought a temporary resident [TR] visa factored into the Officer's decision.

[6] Mr. Ashiru disputes the Officer's finding that he reported his marital status as single. Rather he states that he consistently reported his marital status as "married" in all immigration documents.

[7] The Certified Tribunal Record does contain the TR application that the Officer appears to have relied upon. In reviewing that TR application it is evident that it does not relate to Mr. Ashiru but rather another individual who appears to have had some connection to Mr. Ashiru as part of a musical group. The respondent acknowledged this error in oral submissions but argued that there was still evidence to allow the Officer to reasonably conclude the marriage was not genuine.

[8] I do not dispute that there may well remain a basis upon which the Officer could reasonably conclude the marriage was not genuine. However, such an outcome is not certain. It is not for this Court on judicial review to engage in the weighing of evidence or to exercise the discretion that is vested in the decision-maker: "[i]t must be remembered that the administrator, not the reviewing court, is the merits-decider" (*Robbins v Canada (Attorney General)*, 2017 FCA 24 at para 17). The Officer's reliance on the incorrect TR renders the decision unreasonable. The application for judicial review is granted.

[9] The Applicant has named the Minister of Immigration, Refugees and Citizenship Canada as the Respondent in this matter. The correct Respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1)). Accordingly, the Respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

[10] The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-5119-16

THIS COURT'S JUDGMENT is that:

1. The application is granted;
2. The matter is returned for redetermination by a different decision-maker;
3. The Respondent in the style of cause is amended to the Minister of Citizenship and Immigration; and
4. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5119-16

STYLE OF CAUSE: GRACE OLUWASEUN OKUNEYE ASHIRU v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 6, 2017

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 13, 2017

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FOR THE APPLICANT

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FOR THE RESPONDENT

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