

Federal Court



Cour fédérale

**Date: 20180110**

**Docket: IMM-2213-17**

**Citation: 2018 FC 19**

**Toronto, Ontario, January 10, 2018**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**IFEOMA NAOMI ONWUBOLU**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a Nigerian citizen who seeks judicial review of the April 24, 2017 decision of an immigration officer [the Officer] denying her claim for permanent resident status under the Spouse or Common-Law Partner in Canada class. The Officer found that the Applicant's marriage was entered into primarily for the purposes of acquiring status or privilege under the *Immigration and Refugee Protection Act* [IRPA].

[2] For the reasons that follow this judicial review is dismissed as the Officer reasonably considered the evidence.

I. Background

[3] The Applicant came to Canada in June 2014. Her refugee claim was refused in August 2014.

[4] The Applicant met her sponsor spouse in December 2014 and they married on April 18, 2015.

[5] On July 6, 2015, the Applicant filed an application under the Spouse or Common-Law Partner in Canada class. She filed additional information on January 26, 2017 and an interview of the Applicant and her spouse was conducted on April 5, 2017.

II. Decision Under Review

[6] The decision under review is the letter and reasons of the Officer dated April 24, 2017.

[7] The Officer rejected the application because he concluded that the Applicant entered into the marriage for primarily immigration purposes. The Officer based his decision on s.4(1) of *Immigration and Refugee Protection Regulations* [IRPR], which provides that a foreign national shall not be considered a spouse, common-law partner, or conjugal partner of a person if the

marriage, common law or conjugal partnership was entered primarily for the purpose of acquiring any status or privilege under the IRPA.

[8] The Officer detailed a number of concerns with the Applicant's documentation and answers given during the interview. The Officer concluded that based on a review of the entire application, the Applicant was not credible, and the explanations provided were not sufficient to dispel the credibility concerns.

### III. Relevant Statutory Provision

[9] Section 4(1) of the IRPR states as follows:

#### **Bad faith**

**4 (1)** For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

**(a)** was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

**(b)** is not genuine.

#### **Mauvaise foi**

**4(1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas

**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

**b)** n'est pas authentique.

IV. Issue and Standard of Review

[10] The only issue for determination is if the decision of the Officer is reasonable.

[11] The reasonableness standard applies to the question of whether the marriage is entered into for the primary purpose of immigration (*Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 at para 15). It is well-established that significant deference is owed to immigration officers who assess the *bona fides* of a marriage (*Shahzad v Canada (Citizenship and Immigration)*, 2017 FC 999 at para 14 [*Shahzad*]).

V. Analysis

[12] The Applicant argues that the Officer failed to consider all of the evidence and that he unduly focused on discrepancies and contradictory evidence.

[13] The tests under s. 4(1)(a) and (b) are disjunctive (*Trieu v Canada (Citizenship and Immigration)*, 2017 FC 925 at para 37 [*Trieu*]). This means that an Applicant must demonstrate that a marriage is both genuine and that it was not entered into for the primary purposes of acquiring a status under the IRPA (*Trieu*, at para 36; *Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at paras 29-30 [*Gill*]).

[14] There is also a temporal distinction between each test. Claims under s. 4(1)(a) are assessed at the time of the marriage, while claims under s.4(1)(b) are assessed at the present time. As confirmed in *Lawrence v Canada (Citizenship and Immigration)*, 2017 FC 369 at para

14, evidence relevant to one element of the test can also be relevant to the other part of the test. For that reason, evidence which arose after the marriage is relevant to demonstrate whether the primary purpose of the marriage was designed to obtain status under the IRPA. While evidence which postdates the marriage cannot be used to overcome evidence of purpose at the time of marriage (*Trieu*, at para 28), it is relevant.

[15] The onus lies on the Applicant to adduce all evidence required to prove a successful claim (*Obeta v Canada (Citizenship and Immigration)*, 2012 FC 1542 at para 25; *Oladipo v Canada (Citizenship and Immigration)*, 2008 FC 366 at para 24).

[16] Here, the Officer reasonably concluded that the Applicant failed to discharge this onus.

[17] During oral submissions the Applicant relied upon the decision in *Ma v Canada (Citizenship and Immigration)*, 2016 FC 1283 [*Ma*]. In *Ma* there was significant documentary evidence in the form of bank records, tax returns, cell phone accounts, health care documents and insurance records along with letters of support. The Officer in *Ma* did not address any of the documentation in his decision or weigh the evidence against the negative credibility findings. However, that is not the case here.

[18] Here, the Applicant offered little evidence for the Officer's consideration. The evidence that was offered was considered by the Officer to be weak. The Officer noted that he reviewed all of the evidence, and is presumed to have done so, including the evidence pertaining to joint

bank accounts and bills (*Florea v Canada (Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1).

[19] The Officer addressed the problems with the documentary evidence that was offered by the Applicant, particularly the affidavit respecting the death of her former husband and the associated death certificate.

[20] The Officer had reasons to doubt the veracity of this evidence. The affidavit was obtained after the Applicant came to Canada, not in Nigeria, and the death certificate was dated the same day as the affidavit, even though they were obtained a year apart.

[21] The weight assigned to the affidavit by the Officer and the fact that the Applicant did not originally offer the death certificate cannot be reweighed on judicial review. Further, because the onus is on the Applicant to “put her best foot forward,” the Officer was entitled to draw an adverse inference from the fact that she did not originally offer the death certificate into evidence.

[22] In assessing the Officer’s analysis of these documents on a reasonableness review, the Court must simply be able to understand how the Officer came to his decision in light of the facts, evidence and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). This evidence was insufficient to demonstrate that the marriage was not for the primary purpose of immigration. It is within the Officer’s expertise to draw that conclusion.

[23] The Officer's evidentiary conclusions were supported by a number of credibility findings. A court on judicial review owes particular deference to the Officer on credibility issues (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 41-46). This is particularly true for issues of credibility which are central to the analysis of marriages under s.4 of the IRPR (*Keo v Canada (Citizenship and Immigration)*, 2011 FC 1456 at para 24). The Officer is entitled to draw adverse credibility findings from day-to-day matters (*Shahzad*, at para 43).

[24] The Officer reasonably drew such conclusions here. The Officer found the fact that the Applicant could not remember where her husband was on the day of their wedding undermined her credibility. The Officer drew an adverse inference from the spouse's lack of knowledge of the Applicant's child's medical issues, the Applicant's previous immigration issues, and the spouse's inability to recount that the Applicant was on social assistance. Having a firsthand account of the Applicant and her spouse's demeanour at the interview, the Officer also had an opportunity to observe their behaviour and draw adverse inferences. All of these findings are in the "heartland" of the Officer's function assessing credibility, and "went to the fundamental events at the very heart of the bona fide relationship" which the Applicant claimed to have with her spouse (*Shahzad*, at para 44).

[25] While, on judicial review, the Applicant seeks to reframe these findings and provide alternative explanations, these explanations are in effect disagreements with the Officer's assessment of the evidence—the Applicant asks the Court to replace the Officer's credibility findings with her explanations. That is not the Court's role.

[26] The Officer's assessment of this evidence was logically based on his own inferences. There is no basis to intervene. The judicial review is therefore dismissed.



**JUDGMENT in IMM-2213-17**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review of the Officer's decision is dismissed.
2. No question of general importance is certified.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2213-17

**STYLE OF CAUSE:** IFEOMA NAOMI ONWUBOLU v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 9, 2018

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** JANUARY 10, 2018

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