

Federal Court



Cour fédérale

Date: 20180626

Docket: IMM-4069-17

Citation: 2018 FC 657

Ottawa, Ontario, June 26, 2018

PRESENT: The Honourable Mr. Justice Bell

Docket: IMM-4069-17

BETWEEN:

GURPREET KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of the decision of an Immigration Officer [Officer] wherein the Officer refused the Applicant's application for permanent resident status under the spouse or common-law spouse in Canada class on the basis that the Applicant's marriage is not genuine and was entered into primarily for immigration purposes.

II. Factual Background

[2] The Applicant is a 34-year-old citizen of India. She entered Canada as a temporary foreign worker in 2013. The Applicant's work permit expired on September 9, 2017.

[3] The Applicant's sponsor, Surjeet Singh Nahal [Sponsor], is a 56-year-old citizen of Canada. The Sponsor was born in India and was sponsored by his first wife, with whom he was married from February 7, 1986, to February 24, 1988. He became a permanent resident of Canada on February 5, 1986.

[4] Following his first divorce, the Sponsor has remarried four times to four different Indian nationals in the past 30 years. He has sponsored or submitted spousal applications for each of these four women. The details of those marriages and sponsorships are as follows:

- A. He sponsored his second Indian wife on December 28, 1989. They divorced on September 13, 1990. She became a permanent resident of Canada on the basis of his sponsorship;
- B. He sponsored his third Indian wife on November 18, 1993, and divorced her on December 16, 2002. This spousal application was refused on "marriage of convenience" concerns, which refusal was upheld following judicial review in this Court;

C. He sponsored his fourth Indian wife on November 6, 2003, and divorced her on April 19, 2015. She became a permanent resident of Canada on the basis of his sponsorship.

[5] The Applicant, the Sponsor's fifth wife, has known the Sponsor since 2008. They first met in person in February 2012. The Sponsor was then married to his fourth wife. On September 5, 2013, the Applicant entered Canada as a temporary resident authorized to work for a period of one year. On January 1, 2014, the Applicant began cohabiting with the Sponsor. The Sponsor was then separated from his fourth wife. As noted above, the Sponsor obtained a divorce from his fourth wife on April 19, 2015. He married the Applicant on May 15, 2015. The Applicant applied for permanent resident status under the spouse or common-law spouse in Canada class on June 24, 2015.

[6] On November 15, 2016, the Applicant gave birth to her and the Sponsor's daughter.

[7] On March 7, 2017, the Applicant and the Sponsor appeared for an in-person interview with the Officer. They were first interviewed separately, and then together. During the interviews the Officer asked both the Applicant and Sponsor numerous questions, in order to assess whether they were in a genuine conjugal relationship and cohabiting in Canada. The following constitute some of the discrepancies and inconsistencies noted by the Officer as a result of the interviews:

A. The Sponsor did not know the year the Applicant first entered Canada;

B. The Sponsor did not know where in India the Applicant is from;

- C. The Applicant did not know where in India the Sponsor is from;
- D. There was a discrepancy between the Sponsor and the Applicant about when they first met;
- E. There was a discrepancy between the Sponsor and the Applicant about when they first began cohabiting;
- F. There were discrepancies between the Sponsor and the Applicant about their most recent vacation together;
- G. There were discrepancies between the Sponsor and the Applicant about their honeymoon destination;
- H. There were discrepancies between the Sponsor and the Applicant about when they were most recently intimate;
- I. The Applicant was unaware of the Sponsor's work schedule despite their alleged cohabitation; and
- J. The Sponsor and the Applicant differently described how they spend their weekends.

[8] By letter dated September 13, 2017, the Applicant's application was refused. The Officer concluded the Applicant had not established, on a balance of probabilities, that her marriage to the Sponsor is genuine and was not entered into primarily for immigration purposes. It is that decision which is the subject of this application for judicial review.

III. The Officer's Decision

[9] Based in part on the information set out in paragraphs 4 and 7 above, the Officer concludes “[t]here are concerns regarding the sponsor’s immigration history as he has a pattern of sponsoring Indian nationals under the family class category and filing federal court appeals on previous officer’s refusals”. The Officer also observes the Sponsor has committed adultery during his marriages, noting it appears from the divorce decision certificates that the Sponsor’s divorces are based, in part, on grounds of adultery and mental cruelty.

[10] The Officer states that, prior to asking any questions at the March 7, 2017 interviews, she informed the Applicant and the Sponsor of their obligation to answer all questions truthfully as required by subsection 16(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [Act]. She then states she asked numerous questions to assess whether the Applicant and Sponsor were in a genuine conjugal relationship and cohabiting in Canada. The Officer notes that, while the Applicant and the Sponsor both demonstrated general knowledge of each other’s personal circumstances, there were several discrepancies between the answers provided by the Applicant and the Sponsor during the interview. These are set out in general terms in paragraph 7 above.

[11] The Officer notes during the procedural fairness interview “the client [sic] would interrupt and would provide the sponsor [sic] her answer to the questions”. The Officer goes on to observe that the Sponsor has experience submitting spousal applications and is familiar with spousal interviews, including the questions asked. The Officer concludes the Applicant’s and Sponsor’s body language did not indicate they were in a genuine relationship.

[12] After having carefully considered the documents provided at the interview and those submitted prior to the interview, and given the conduct of the parties and responses during the interviews, the Officer concludes the Applicant has not established, on a balance of probabilities, that her marriage is genuine and that it was not entered into primarily for the purpose of acquiring a status or privilege under the Act. As such, the Applicant may not be considered a spouse in accordance with subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

IV. Relevant Regulatory Provisions

[13] Subsection 4(1) of the Regulations is relevant to the within application for judicial review:

FAMILY RELATIONSHIPS

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.

NOTION DE FAMILLE

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.

V. Issues

[14] In her written submissions, the Applicant sets out only one issue for consideration. It can be paraphrased simply as: is the Officer's conclusion that the marriage is not genuine reasonable in the circumstances? However, as her argument unfolds, the Applicant seems to raise an additional issue not specifically pled, namely: did the Officer act in bad faith during the decision-making process? I will address both issues.

VI. Analysis

A. *Standard of Review*

[15] The parties agree that the question of whether a marriage is genuine or entered into for the purpose of acquiring a status or privilege under the *Act* is one of mixed fact and law and is reviewable on the standard of reasonableness (*Moossavi-Zadeh v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 365, [2017] F.C.J. No. 365 at para. 17 [*Moossavi*]; *Shahzad v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 999, [2017] F.C.J. No. 1058 at para. 14 (*Shahzad*); *Bercasio v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 244, [2016] F.C.J. No. 207 at para. 17 [*Bercasio*]; *Cai v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 1227, [2016] F.C.J. No. 1335 at para. 13 [*Cai*]. See also *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 51 [*Dunsmuir*]).

[16] Where an issue attracts a reasonableness review, this Court must give consideration to the justification, transparency and intelligibility of the decision-making process [*Dunsmuir* at para.

47]. It cannot substitute its own views for those of the Officer, but must show deference and determine whether the Decision falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59 [*Khosa*]). See also *Dunsmuir* at para. 47; *Moossavi* at para. 18; *Shahzad* at paras 30-31; *Cai* at para. 13). It is not the function of this Court to reweigh the evidence considered by the Officer (*Khosa* at para. 61).

[17] Questions involving a breach of procedural fairness, such as bad faith in the decision-making process, are reviewable on the correctness standard (*Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 at para. 79; *Khosa* at para. 43; *Cai* at para. 14).

B. *Is the Decision reasonable?*

[18] The Applicant appears to attack the decision based upon seemingly gratuitous statements by the Officer that, while one child will not suffice to grant permanent residency, two would confirm the *bona fides* of their relationship. With respect, it would appear the Applicant is simply taking a part of the interview out of context. In my view, a reasonable interpretation of the Officer’s observation is consistent with the jurisprudence, namely: the birth of a child does not, in and of itself, establish the *bona fides* of a marriage at the time it was entered into. All factors must be considered in context.

[19] The Applicant also appears to challenge the reasonableness of the Officer’s findings concerning the Sponsor’s past marriages, including the Officer’s consideration of the reasons for the resulting divorces. I note that, in assessing whether a marriage is genuine, an officer may

consider a number of factors, including but not limited to: (a) the length of the relationship before the marriage; (b) the compatibility of the spouses, especially with respect to their age, financial situation, and respective interests; (c) development of the relationship; (d) communications between them, including visits they may have made; (e) how well they know one another; and (f) previous marriages (*Canada (Minister of Citizenship and Immigration) v. Genter*, 2018 FC 32, [2018] F.C.J. No. 15 at para. 14 [*Genter*]). I would respectfully add to that list the number and nature of previous spousal sponsorship applications, and when and why those marriages were terminated. Accordingly, it was reasonable for the Officer to consider the Sponsor's past marriages and divorces in determining whether the Applicant met the onus that was upon her.

[20] Finally, on the issue of the reasonableness of the decision, the Applicant attempts to leverage a minor typographical error into reasons that are incomprehensible as they relate to the Officer's "body language assessment". This contention has no merit. The meaning of the Officer's conclusion remains clear even with the minor typographical error. That meaning can be simply stated as follows: the body-language witnessed by the Officer during the procedural fairness proceeding did not evidence a genuine relationship between the Sponsor and the Applicant, as required by the *Act*. That conclusion made by the Officer is one she was entitled to make.

[21] The Applicant spills much ink in her efforts to explain away the inconsistencies observed by the Officer. For example, she explains that her lack of knowledge about their honeymoon destination exists because "I am not very good at navigation". She contends her husband should

not know the city from which she comes because he “left India” over 30 years ago. Essentially, I find the Applicant is, through her submissions, attempting to modify the record and, with that modified record, convince this Court to re-weigh the evidence. The onus was upon her to put her best case forward and to present an application that was complete, relevant, convincing, and unambiguous (*Shahzad* at paras 19, 40. See also *Genter* at para. 13). The observations made by the Officer regarding the discrepancies and inconsistencies were, in my view, reasonable.

C. *Does the record demonstrate bad faith on the part of the Officer?*

[22] The Applicant does not identify “bad faith” or “bias” as an issue for consideration in respect of the present review application. However, she and the Sponsor make serious allegations suggesting bad faith on the part of the Officer. I note at the outset that there is a presumption of good faith generally afforded to officers (*Freeman v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 1065, [2013] F.C.J. No. 1148 at para. 25 [*Freeman*], citing *Saint-Laurent (Ville) v. Marien*, [1962] S.C.R. 580, 35 D.L.R. (2d) 165 at para. 14).

[23] The Applicant claims the Officer was “just seeking an excuse to say no to our application” and the Sponsor claims the Officer “made me feel that I am a criminal” and “it was clear to me that it [sic] was predetermined to refuse my wife’s permanent resident visa”. In support of these assertions, the Applicant refers to:

A. The Officer’s reference to the Divorce Certificates pertaining to the Sponsor’s previous marriages;

B. The fact that the Officer made no “further inquiries, or analysis” on why the Sponsor’s previous marriages had broken down; and

C. The Officer’s “approach to the interview”, as evidenced by:

- i. The fact that the Officer advised the Applicant and her Sponsor of the duty to answer questions truthfully at the commencement of the interview; and
- ii. The Officer’s overall body language and tone during the interview.

[24] After having reviewed the record, I reject the Applicant’s assertions of bad faith.

Although the Officer states the Sponsor’s marital history is a major concern, the reasons demonstrate she did not treat the Sponsor’s immigration and marital history as determinative. She considered these factors together with the discrepancies in the evidence, as well as with the Applicant’s and the Sponsor’s demeanour during the interview. It was open to the Officer to determine what weight to assign to each of these factors.

[25] With respect to the Applicant’s contention that the Officer made no “further inquiries [sic], or analysis” as to why the Sponsor’s previous marriages had broken down, the Officer’s interview notes prove otherwise. Those notes demonstrate the Officer inquired into this very issue. In response to follow-up questions regarding his marriage breakdowns, the Sponsor explained his first marriage terminated because he was accused of adultery and “fighting in the family in the house”. He said his second marriage broke down because he was accused of domestic violence and of “kicking” his spouse out of the house. The Sponsor explained he

married his third wife in India, returned to Canada, and applied to sponsor her but eventually learned she had married someone else. The Sponsor explained his fourth marriage lasted close to ten years but “things didn’t work out”. It is clear the Officer did exactly what the Applicant accuses her of not doing. There is no merit to this assertion of bad faith on the part of the Officer.

[26] The Applicant contends the Officer’s “approach to the interview” demonstrates bad faith. The Officer replies in her affidavit that she cannot account for the Applicant’s or the Sponsor’s impression of her manner. The Officer states she attempts to be welcoming, to make eye contact, and to keep her arms uncrossed during the interview process. This approach is in accordance with her training. She deposes that she did not depart from this practice during the interviews with the Applicant and the Sponsor.

[27] Finally, the Applicant contends the Officer’s reminder that the Applicant and Sponsor were required to answer all questions truthfully is demonstrative of bad faith. The Officer replies that this reminder is standard practice. The Officer states that she refers to section 16 of the *Act* at the beginning of each interview in order to ensure that the interviewee is aware of the obligation to be truthful.

[28] In my view, there is not a scintilla of evidence of bad faith on the part of the Officer. The good faith presumption referred to in *Freeman* has not been rebutted in the circumstances.

VII. Conclusion

[29] For these reasons, I would dismiss the within application for judicial review. No question is certified for consideration by the Federal Court of Appeal.

JUDGMENT in IMM-4069-17

THIS COURT'S JUDGMENT is that the Judicial Review is dismissed and there are no questions of general importance to certify.

“B. Richard Bell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4069-17

STYLE OF CAUSE: GURPREET KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MARCH 28, 2018

**REASONS FOR JUDGMENT
AND JUDGMENT:** BELL J.

DATED: JUNE 25, 2018

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