

Federal Court



Cour fédérale

Date: 20191218

Docket: IMM-707-19

Citation: 2019 FC 1625

St. John's, Newfoundland and Labrador, December 18, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MAI SATI
SIE ALEXANDER WILSON
CLARENCE KPARKAR
SEMIRA WILSON**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Mai Sati (the “Principal Applicant”), her common-law husband, Mr. Sie Alexander Wilson, and their children, Clarence Kparkar and Semira Wilson (collectively the “Applicants”) seek judicial review of the decision of a Migration Officer (the “Officer”) at the High Commission of Canada in Accra, Ghana.

[2] The Applicants are citizens of Liberia. The Immigration and Refugee Board, Refugee Protection Division (the “RPD”) granted the Principal Applicant refugee status on February 6, 2017. On February 27, 2017, she applied for permanent residence, as a “protected person in Canada” and included her common-law husband and her children in that application.

[3] In the decision dated January 18, 2019, the Officer refused the permanent residence application relative to the Principal Applicant’s common-law husband and her children.

[4] The Officer found that the Principal Applicant’s marital relationship was not genuine, within the meaning of subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”). As well, the Officer found the children were inadmissible pursuant to subsections 11(1) and 16(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), since their father had not provided his consent for their travel to Canada.

[5] The Applicants submit that the Officer breached the duty of procedural fairness by consulting and relying upon extrinsic evidence, specifically Facebook pages from the Principal Applicant and her common-law husband, and family members and friends, without notifying them of such consultation.

[6] The Applicants also argue the decision was not reasonable, based on the evidence before the Officer. They submit the Officer did not consider all of the evidence, including the Facebook pages and the Principal Applicant’s prior testimony before the RPD. They argue that the Officer

unreasonably assessed the Principal Applicant's evidence about the status of her common-law relationship.

[7] The Minister of Citizenship and Immigration (the "Respondent") submits there was no breach of procedural fairness and the decision of the Officer was reasonable.

[8] Questions of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[9] The applicable standard of review for the Officer's decision on the merits of the application for permanent residency is reasonableness; see the decision in *Khosa, supra*.

[10] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[11] It is not necessary for me to address the arguments about a breach of procedural fairness arising from the Officer's treatment of the Facebook pages, since I am not satisfied the decision on the merits meets the legal test of reasonableness.

[12] The Principal Applicant was granted Convention refugee status on the basis of her activism on behalf of LBGTI rights and she was perceived as being a lesbian. The RPD found that she is not a lesbian but is at risk in Liberia because of her position as an advocate.

[13] The Certified Tribunal Record (the “CTR”) in this proceeding contains the written decision of the RPD.

[14] The Principal Applicant, in her Basis of Claim (“BOC”) filed in support of her claim for protection, referred to difficulties in her relationship with her common-law spouse and she said she hoped to reconcile with him. I refer to lines 24-30 on page 13 of the BOC, found at page 53 of the Applicants’ Record.

[15] The Principal Applicant also said in her BOC that her family and her common-law husband had rejected her; see lines 23 to 27 of the BOC at page 16, found at page 56 of the Applicants’ Record.

[16] The RPD referred to these statements in its decision finding the Principal Applicant to be a Convention refugee.

[17] In my opinion, the Officer did not reasonably assess the evidence, including the Facebook pages, in reaching a conclusion about the genuineness of the Principal Applicant’s relationship with her common-law spouse. The negative decision about the relationship led to the negative decision about the application for permanent residence on behalf of the two children.

[18] In the result, the application for judicial review will be allowed, the decision is set aside and the matter is remitted to a different officer for re-determination.

[19] There is no question for certification arising.

JUDGMENT in IMM-707-19

THIS COURT'S JUDGMENT is that the application for judicial review will be allowed, the decision is set aside and the matter is remitted to a different officer for re-determination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-707-19

STYLE OF CAUSE: MAI SATI, SIE ALEXANDER WILSON, CLARENCE
KPARKAR, SEMIRA WILSON v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 9, 2019

JUDGMENT AND REASONS: HENEGHAN J.

DATED: DECEMBER 18, 2019

APPEARANCES:

Raoul Boulakia FOR THE APPLICANTS

Daniel Engle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raoul Boulakia FOR THE APPLICANTS
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario