Federal Court  Cour fédérale

Date: 20200213

Docket: IMM-869-19

Citation: 2020 FC 241

Ottawa, Ontario, February 13, 2020

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

QI HAN HUANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is a judicial review of a January 29, 2019 decision refusing the Applicant's application for permanent residence [Decision]. It is brought pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicant, Mr. Qui Han Huang, is a 69-year-old Chinese citizen. He has two daughters and he and his wife divorced in 2002.

[3] In 1992, Mr. Huang left China and travelled to the United States to pursue better means of supporting his family. He stayed there for a while, but left due to personal circumstances. In 2013, he began to live with his son and former wife in Canada. He continues to do so.

[4] In December 2014, the CBSA apprehended Mr. Huang, detained him, and issued an exclusion order against him.

[5] In July 2016, Mr. Huang applied for permanent residence under the Spouse/Common-law Partner category, listing his former wife as the sponsoring partner. The denial of this application is the subject of the current judicial review.

[6] The application for judicial review is dismissed for the reasons that follow.

II. Decision under Review

[7] Mr. Huang submitted his application for permanent residence on July 27, 2016 as a member of the spouse/common law partner class. The Applicant provided a number of documents in support of his application. On January 29, 2019, the Immigration Officer [Officer] found that the Mr. Huang did not adequately demonstrate that he was in a common-law relationship with his former wife, and so he did not meet the requirement of being a “spouse” for

the purposes of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and *Immigration and Refugee Protection Regulations*, section 124(a). As a result, his application was refused.

[8] The Officer noted that there was an insufficient level of mutual interdependency. The Officer found that Mr. Huang's submitted documents established that he shared an address with his former wife, but not that the two were mutually interdependent as would be expected in a "genuine relationship". The Officer noted:

> I am not satisfied sufficient substantive information has been provided to support cohabitation in a genuine common-law relationship for at least 1 year prior to the submission of the application.

III. Issues and Standard of Review

[9] The Applicant raises two issues: (1) that the Officer failed to address the documentary evidence attesting to the genuineness of the relationship; and (2) the Officer chose not to interview the Applicant or his "wife", yet found they were not credible, leading to a denial of procedural fairness.

[10] Although those are the issue that the Applicant presents, the Applicant's actual arguments contain more specific claims:

1. The Officer did not assess evidence that contradicts his/her own findings.

2. The Officer was not sensitive to the circumstances of the couple.

3. The Officer erred in fact and law by dismissing the adequacy of the government-issued document showing a joint address and compounds the reason for rejecting the documents by failing to call the couple in for an interview.

4. The Officer's conclusion lacks intelligibility as the officer should have called the Applicant and his wife for an interview.

5. The Officer's predetermination that nothing the Applicant or his wife could have said in an interview would compensate for more documentary evidence is not justifiable.

6. The Decision as a whole is unreasonable.

7. It is not transparent or intelligible how the Officer can refute the tax and government documents as evidence of their ongoing relationship […].

[11] The Respondent argues that (1) no evidence was ignored; and (2) there was no breach of procedural fairness.

[12] Based on the nature of the Applicant's claims, the issues are best characterized as follows:

1. Was the Decision reasonable?
2. Was the Applicant denied procedural fairness?

[13] The parties agree that the first issue is to be assessed on a standard of reasonableness.

[14] This matter was argued prior to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court did not direct further submissions on the standard of review and counsel did not request such an opportunity. I have reviewed the Supreme Court's recent review of the Canadian administrative law framework and find that this first question should be assessed under a reasonableness standard of review. I can see no reason to rebut the now-presumed presumption of reasonableness (*Vavilov* at paras 16–17, 65–68).

[15] Questions of procedural fairness attract a standard of correctness, affording no deference to the decision maker (*Khosa v Canada (Minister of Citizenship and Immigration)*, 2009 SCC 12).

IV. Parties' Positions

A. *Was the Decision Reasonable?*

(1) Applicant's Position

[16] The Applicant's primary claim is that the decision was unreasonable because the Officer failed to address certain documentary evidence concerning the genuineness of the Applicant's relationship with his former wife. He cites *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FTR 35 (TD) [*Cepeda*] for the proposition that, "where directly contradictory evidence is not addressed by a decision maker a Court may more readily conclude that a decision-maker reached a determination without regard to the evidence before it." He then lists the evidence that he believes establishes the Applicant's common law relationship. The

Applicant argues that, because the findings of the Officer and the evidence before the Officer are contradictory, this Court should reach the conclusion that the Officer reached a determination without regard to the evidence.

[17] The Applicant further argues that the Officer did not disclose how the evidence was weighed or considered. The Applicant submits that this undermined the transparency, intelligibility, and justifiability of the Decision. The Applicant also submits that the "officer's predetermination that nothing the Applicant or his wife could have said in an interview would compensate for more documentary evidence" also undermined the justifiability of the Decision.

[18] In his reply, the Applicant repeats the above arguments and alleges that the Officer was insensitive to the Applicant's unique circumstances—namely, his old age and cultural background.

(2) Respondent's Position

[19] The Respondent argues that the Officer considered and weighed all of the evidence, but reached the conclusion that the evidence did not meet the threshold required to show a common-law relationship. The Respondent submits that the Applicant is merely asking the Court to re-weigh the evidence.

[20] The Respondent cites a number of cases for the proposition that an immigration officer is not obliged to mention every piece of evidence used to make a decision, most notably *Suresh v*

Canada (Minister of Citizenship and Immigration), 2002 SCC 1, and *Sidhu v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 741 at para 15 (Westlaw) [*Sidhu*].

B. *Was the Applicant Denied Procedural Fairness?*

(1) Applicant's Position

[21] The Applicant claims that he should have been entitled to an interview, given that it would have aided the Applicant's case. He cites *Cesar v Canada (Minister of Citizenship & Immigration)*, 2008 FC 1350 [*Cesar*] for, assumedly, the proposition that interviews ought to be granted where they serve a purpose. The Applicant claims that, "it is rare that an interview is not scheduled when an interview could have provided information on their level of mutual interdependency", but does not cite legal sources in support of that claim.

(2) Respondent's Position

[22] The Respondent argues that this case turns on the sufficiency of evidence, and notes that there is no general duty for immigration officers to interview applicants. The Respondent cites a number of immigration decisions that support this proposition.

V. Analysis

A. *Was the Decision Reasonable?*

[23] I am persuaded by the Respondent's cited jurisprudence that there is no obligation on an immigration officer to mention or refer to every piece of evidence when rendering a decision, so

long as the Court is satisfied that all relevant facts were before the immigration officer and were considered (*Sidhu* at para 15). This Court has recently affirmed the longstanding presumption that decision makers have considered all of the evidence before them (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 641 at para 16).

[24] The Applicant has not rebutted that presumption. *Cepeda* stands for the proposition that immigration officers' decisions *may* be unreasonable if they neglect to mention significant evidence that goes against their eventual conclusions. I do not find that the Officer failed to mention any significant evidence going against his conclusion. The Officer simply thought the evidence was insufficient.

[25] The Applicant mentions difficulties that he faced in bringing the application. These difficulties are not relevant to the reasonableness of the Officer's decision.

[26] The Applicant's various claims that the Decision was not transparent, intelligible, or justified are also insufficient to warrant this Court's intervention. In *Vavilov* at paras 103–104, the Supreme Court listed a few of the hallmarks of an unreasonable decision. The analysis focuses on whether the Court is able to understand the decision and satisfy itself that the decision "adds up". Here, I am able to understand the Officer's reason for making the decision—again, primarily a lack of evidence supporting mutual interdependency, leading to a finding of a non-genuine relationship.

[27] For the reasons above, I find that the Decision was reasonable. The Applicant has simply asked for a reweighing of the evidence before the Officer, but this is not the Court's role in an application for judicial review.

B. *Was the Applicant denied Procedural Fairness?*

[28] On the procedural fairness issue, I am also persuaded by the Respondent's arguments. As the Respondent has correctly argued, immigration officers have no general duty to provide interviews or seek additional clarifications where the evidence before them is insufficient. From *Mbala v Canada (Minister of Citizenship and Immigration),* 2006 FC 1057 at para 22:

> [22] As was held in *Madan v. Canada (Minister of Citizenship and Immigration),* [1999] F.C.J. No. 1198 (QL), at paragraph 6, since the onus is on the applicant, the Immigration Officer does not have to ask for additional material. It is up to the applicant to provide all the necessary material in order to satisfy the Immigration Officer that he or she does meet the relevant requirements:
>
> > It is well established that it is the responsibility of a visa applicant to put before the officer all the material necessary for a favourable decision to be made. Hence, visa officers are under no general legal duty to ask for clarification or for additional information before rejecting a visa application on the ground that the material submitted was insufficient to satisfy the officer that the applicant had met the relevant selection criteria.

[29] The Applicant claims it is "rare" for an interview not to be scheduled where it could have provided additional information on "mutual dependency". However, the Applicant has provided no basis for this claim.

[30] The Applicant cites *Cesar*, assumedly for the proposition that an interview should be given where it serves a purpose. However, this is not correct. In *Cesar* at paragraphs 7-8, Justice Phelan, in determining whether an immigration officer should have given an interview, considered both the officer's obligation to give an interview and whether the interview would have a purpose. He found that there was neither an obligation to give an interview nor a purpose to giving it, and so found that an interview was not required.

[31] The fact that the Officer has no obligation to interview the Applicant in these circumstances is determinative.

[32] For the reasons above, I find that the Decision was made in a procedurally fair manner.

VI. Conclusion

[33] The Officer made a reasonable decision and had no duty to interview the Applicant. This application for judicial review is dismissed.

[34] There is no question for certification raised by the parties and none arises.

JUDGMENT in IMM-869-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification and none arises.

3. There is no order as to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mary Lam	FOR THE APPLICANT
Laoura Christodoulides	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mary Lam Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT