Federal Court  Cour fédérale

Date: 20230926

Docket: IMM-5994-22

Citation: 2023 FC 1295

Ottawa, Ontario, September 26, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

ABOLAJI FAFORE FASHINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Abolaji Fafore Fashina, is a Nigerian citizen seeking permanent residence as the spouse of his Sponsor, a Canadian citizen born in Sierra Leone. In an interview conducted as a part of the application process, an Officer from Immigration, Refugee, and Citizenship Canada [IRCC] found several inconsistencies in answers given by the Applicant and his Sponsor,

as well as information suggesting that they were not cohabiting. The Officer thereby rejected the sponsorship.

[2] The Applicant now seeks judicial review. He claims that his right to procedural fairness was breached during the interview process because he and his Sponsor were not given the opportunity to respond to their alleged inconsistent statements, nor be interviewed together to explain or justify them. He further argues that the Officer's decision was unreasonable.

[3] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to discharge his burden and demonstrate that the Officer's decision was unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[4] Prior to arriving in Canada, the Applicant sought a student visa, which was refused in 2015. From 2016 until his arrival in Canada in July of 2017, the Applicant lived in the United States where he was a student.

[5] Upon coming to Canada, the Applicant sought refugee status, but his application was dismissed about two years later. During this time, he claims to have met his wife at a friend's birthday party on or about May 19, 2018. They were married in February of 2020. Four months later, the Applicant sought permanent resident status under the Spouse or Common-Law Partner

in Canada Class, with his wife as Sponsor. The Applicant included his son and daughter in his application.

[6] As a part of the application process, the couple attended an IRCC office for an interview to assess the *bona fides* of the marriage and determine whether they met the requirements of s. 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and s. 124(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The Officer interviewed the Applicant and his Sponsor individually, and denied the sponsorship request. The refusal stemmed from several inconsistencies in the Applicant and his Sponsor's responses during the interview.

[7] Notably, the Sponsor had been living in Gambia since 2021 as a Communications Assistant for the United Nations, and had not visited the Applicant since October 2021 (the Decision was issued on June 13, 2022), only returning to Canada for the interview. Moreover, the evidence of the Applicant and Sponsor concerning the frequency of their communications, by telephone or otherwise, was inconsistent. Finally, the Sponsor could not recall since when the Applicant and her resided at their current address. First, she said October 2020, then 2022 and then 2019. The Applicant suggested in his interview that the date was October 2021.

III. The Decision Under Review

[8] The refusal letter sent to the Applicant stated:

> You have not satisfied me that you have not entered into your marriage primarily for the purposes of immigration. In your interview on June 2nd, 2022, you stated your Sponsor has been

> living and working in Gambia since October 2021. You have not satisfied me that you meet the requirements of Subsection 124(a) of the Immigration and Refugee Protection Regulations.

[9] The Decision and Rationale issued by the Officer noted several inconsistencies and concerns during the interview. For example: the Sponsor had trouble recalling her current address and for how long she had been residing there with the Applicant; there were inconsistencies between the Applicant and the Sponsor as to what route they took to get to the interview and their activities during that time (the Sponsor said she was on the phone with friends for most of the ride while the Applicant said that they talked – and the Applicant stated that the Sponsor did not talk on the phone during their drive); the Sponsor had been living in Gambia for work since October 2021 and had not made any trips to Canada since then (her return was only for the interview); and the Sponsor stated that the couple communicated almost every day by text over WhatsApp and sporadically had video chats or talked over the phone, while the Applicant stated that they talked over the phone and texted often, sometimes skipping a day or two to talk over the phone.

[10] The Officer's GCMS notes provide further detail. After detailing the interviews that the Officer conducted with the Applicant and his Sponsor, the notes read as follows:

> […] Several inconsistencies and concerns were noted throughout the duration of the interview. […] When the Sponsor was asked to confirm her address, she had trouble recalling her address and was unsure about the postal code. When asked how long she had been living at the address, she first stated it was since October 2020, then 2022, then 2019. […] When the PA was asked how long he had been residing at his current address, he stated they moved last October, 2021. […] Regulation 124 states: A foreign national is a member of the spouse or common-law partner in Canada class if they (a) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada; (b) have temporary resident

> status in Canada; and (c) are the subject of a sponsorship application. When the PA was asked how long the Sponsor has been residing abroad, he stated since October of 2021. A review of the Sponsor's passport noted several entry stamps to Gambia since 2018. When this was noted to PA, he stated she has not been living in Gambia permanently, that she travels there to chase her dreams of finding a better job, never having lived there for over 6 months. Several inconsistencies were noted throughout the interview, namely PA & Sponsor's differing statements regarding their drive to the interview, their frequency of communication, and regarding Sponsor's work schedule. The PA & Sponsor have also both admit [*sic*] to not residing together in Canada since October 2021, and for several periods of up to 6 months since 2018. I have considered all evidence as a whole. However, taking into account evidence provided to establish the marriage, and comparing to the information gained during the interview, I am not satisfied the applicant is a genuine spouse as per R4. PA and Sponsor did not provide consistent answers throughout the interview, nor were they able to provide any explanations to alleviate my concerns. The Sponsor is currently residing abroad separately in Gambia. I am not satisfied the PA & Sponsor are cohabitating together as per R124. On a balance of probabilities, I am not satisfied this relationship is genuine and was not entered into primarily for the purpose of acquiring status under the Act, as per R4. Application is refused.

IV. Issues and Standard of Review

[11] Having considered the parties' memoranda and oral arguments, the evidence and the applicable case law, this matter raises two main issues:

1) Whether the decision was procedurally fair; and
2) Whether the decision was reasonable.

[12] The procedural fairness issue is subject to a "reviewing exercise… 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Aboudlal v Canada (Citizenship and Immigration)*, 2023 FC 689 at para 32 citing *Canadian*

Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 [*CPRC*] at para 54). As recently stated in *Caron v Canada (Attorney General)*, 2022 FCA 196 at paragraph 5: "[w]hen engaging in a procedural fairness analysis, [the] Court must assess the procedures and safeguards required, and, if they have not been met, the Court must intervene". The role of the reviewing court on procedural fairness issues is simply to determine whether the procedure that was followed was fair, having regard to the particular circumstances of the case: "The ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (as reiterated in *CPRC* at para 56).

[13] The standard of review applicable to the merits of the Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85); and that is justified, transparent and intelligible (*Vavilov* at para 99). The onus of demonstrating that a decision is unreasonable lies with the Applicant (*Vavilov* at para 100).

[14] As held by Justice Pentney in *Oladihinde v. Canada (Citizenship and Immigration)*, 2019 FC 1246 at para 16:

> [16] To put it another way, on judicial review on the deferential standard of reasonableness, a key concern is whether the process and decision indicate that the decision-maker truly "engaged" with the evidence, applying the appropriate legal test. The standard is not perfection. It must be recalled that Parliament assigned the task of conducting the initial inquiry into the facts to the officer. Deference is due to a decision-maker in particular in a context where the inquiry is primarily factual, and it is within the decision-maker's area of expertise, in a situation where greater exposure to

> the nuances of evidence or a greater awareness of the policy context may provide an advantage. If the chain of reasoning of the decision-maker can be understood, and if it shows that this type of engagement occurred, the decision will generally be found to be reasonable: see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431.

V. Relevant Provisions

[15] The following are the relevant provisions from the IRPA:

Selection of Permanent Residents	**Sélection des résidents permanents**
Family reunification	**Regroupement familial**
12 (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.	**12 (1)** La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

[16] Additionally, the following provisions of the IRPR apply:

Family Relationships	**Notion de famille**
Bad faith	**Mauvaise foi**
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	**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

partnership or conjugal partnership	fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.
…	…
Obtaining status	**Obtention du statut**
72(2)	72 (2)
Classes	**Catégories**
The classes are	Les catégories sont les suivantes :
…	…
(b) the spouse or common-law partner in Canada class;	**b)** la catégorie des époux ou conjoints de fait au Canada;
…	…
Member	**Qualité**
124 A foreign national is a member of the spouse or common-law partner in Canada class if they	**124** Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :
(a) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;	**a)** il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;
(b) have temporary resident status in Canada; and	**b)** il détient le statut de résident temporaire au Canada;

(c) are the subject of a sponsorship application.	**c)** une demande de parrainage a été déposée à son égard.

VI. Analysis

A. *The Applicant's right to procedural fairness was not breached*

[17] The Applicant submits in his memorandum that the interview process was procedurally unfair because the Officer "failed to confront both parties, while seated together, with any of its concerns, so as to afford the parties the opportunity to provide a response". This led to "speculative findings" by the Officer. At the hearing, counsel for the Applicant nuanced this argument, claiming only that the Officer should have put the parties' inconsistent statements to each other — there was no strict need to confront them both together.

[18] The Respondent, relying on this Court's decision in *Shadow Lai v Canada (Citizenship and Immigration)*, 2013 FC 563 at paragraph 28, submits that the Applicant and his Sponsor should not have been surprised when the Officer contrasted their interviews. Being asked for an interview on its own puts the Applicant on notice that answers given will be compared, and allows the Applicant a chance to respond. The decision maker is entitled not to be satisfied with the explanation provided.

[19] I do not agree with the Applicant. It is settled law that "inconsistent statements made by spouses in separate interviews regarding the *bona fides* of the marriage are not evidence that an officer is required to put to an applicant for explanation" (*Singh v Canada (Citizenship and Immigration)*, 2008 FC 673 at para 13; *Dasent v Canada (Minister of Citizenship and*

Immigration) (FCA), [1996] FCJ No 79 at para 5; *Oppong v Canada (Minister of Citizenship and Immigration)* (FCA), [1996] FCJ No 78). In other words, "officers are under no obligation to alert applicants of concerns where they pertain to matters that arose directly from the applicant's own evidence and from statutory requirements" (*Pascal v Canada (Citizenship and Immigration)*, 2017 FC 595 at para 8; see also *Gega v Canada (Citizenship and Immigration)*, 2021 FC 1468 at para 40).

[20] The Officer's GCMS notes are clear that the Applicant and the Sponsor's evidence was inconsistent on many issues that do not normally exist within a married couple. The inconsistencies between the Applicant and his Sponsor's statements arose directly from their own evidence. There was accordingly no requirement that those statements be put to them to allow for response or justification. There was therefore no breach of procedural fairness in this case.

B. *The Officer's decision is reasonable*

[21] It is important at the outset to specify that the GCMS notes form a part of the Officer's reasons and that the Court may rely on them in its evaluation of the reasonableness of the decision (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[22] The Applicant takes particular issue with the Officer's conclusions in light of the facts. He argues that the Officer could not ground a finding that the relationship was not genuine just because the Sponsor could not remember for how long she had been residing with the Applicant at their current address, and that she could not readily recall the address. The Applicant makes a

similar argument in relation to the Officer's findings on the frequency of communications between the Applicant and the Sponsor when living in Gambia and on the inconsistent answers given in relation to the Sponsor's work schedule. In the Applicant's view, none of the responses during the interview were completely incompatible. Rather, the statements were reconcilable when properly assessed in the context of the interviews.

[23] Finally, the Applicant submits that the Sponsor worked in Gambia but did not reside there for more than 6 months at a time. The Applicant and Sponsor were living together in Canada with the Applicant's stepdaughter. The Applicant submits that the Officer unreasonably interpreted their "cohabitation" to mean "continuously present with one another", contrary to this Court's jurisprudence (*Ally v Canada (Citizenship and Immigration)*, 2008 FC 445 [*Ally*] at para 29).

[24] The Respondent submits that the Officer explained the various inconsistencies and reasoned in a manner that showed responsiveness to how the Applicant and Sponsor had lived in different countries since 2021. Further, the Applicant has only pointed out some of the many inconsistencies, and the Officer is owed deference in the factual findings (*Boyacioglu v Canada (Citizenship and Immigration)*, 2021 FC 1356 [*Boyacioglu*] at para 32).

[25] The Respondent also submits that the Officer's interpretation of "cohabitation" is consistent with jurisprudence holding that "separation must be temporary and short" and that intent to live together is insufficient (*Oziegbe v Canada (Citizenship and Immigration)*, 2015 FC 360 [*Oziegbe*] at paras 13-15).

[26] The question as to whether a marriage is *bona fide* is "highly factual" and "can be exceedingly difficult to make… Decision makers tasked with making these difficult determinations are entitled to deference", particularly so "when the decision maker has had the benefit of having questioned the spouses in person" (*Boyacioglu* at para 32).

[27] In my view, in this case, the Officer properly considered the evidence presented and noted several inconsistencies that made them conclude that the marriage was not genuine but rather entered into to gain status under the IRPA. Specifically, these inconsistencies relate to where and for how long the Applicant had lived with the Sponsor, their route and activities on their way to the interview, the method and frequency of their communications and the work schedule of the Sponsor in Gambia.

[28] For example, in relation to their current address and the date when they moved in, the Sponsor had trouble recalling the address and said she had lived there since October, 2020, or 2022, or 2019. The Applicant, gave a different answer, and stated that they had moved to the current address in 2021, only eight months earlier (the interview was in June 2022). The Sponsor gave three different years and none of them was consistent with the year given by the Applicant.

[29] In relation to the Spouse's employment in Gambia, the Officer relied on the Applicant's statements, as demonstrated in the GCMS notes, that "she [had] been living in Gambia since October of 2021" and "[had] not made any trip to visit the PA since [then]". The Officer also relied on the Sponsor's passport entries, noting that there had been many entry stamps in Gambia since 2018, as well as the Applicant's statement that the Sponsor travelled there to chase her dream job but never remained there for over 6 months at the time.

[30] Section 124(a) of the IRPR requires the spouse or common-law partner of a sponsor to cohabit with that sponsor in Canada. In this case, the Officer, relying on the evidence presented, was not convinced that the couple was cohabiting.

[31] The Officer did not require that the couple be "continuously present with one another", as argued by the Applicant. Rather, the reasons are consistent with the jurisprudence from this Court holding that "separation must be temporary and short" (*Oziegbe* at para 14, citing *Chaudhary v Canada (Minister of Citizenship and Immigration)*, 2012 FC 828 at para 12). Furthermore, the Applicant's reliance on *Ally* is incomplete, since the very paragraph cited by the Applicant states that separation must be "temporary and short" (at para 29). In *Ally*, this Court upheld an Officer's finding that a couple did not meet its onus under s. 124 of the IRPR precisely because their separation was not temporary and short (at para 31).

[32] Consequently, the Applicant has not discharged his burden to demonstrate that the Officer's decision was unreasonable. The Officer's reasoning that the Applicant and Sponsor did not meet the requirement of s. 124(a) because they were not cohabitating is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The Officer's findings are factual, based on the evidence and the arguments presented by the parties. I therefore find no basis upon which to intervene.

[33] On the issue of whether the marriage was entered into primarily for the purposes of immigration, under s. 4 of the IRPR, the Respondent conceded at the hearing that the Officer's conclusion regarding the inconsistencies on the frequency of the Applicant and Sponsor's communications while the Sponsor was in Gambia may have been unreasonable. I would add

that other findings of fact could have been interpreted more favourably by the Officer. However, findings of fact must be given significant deference upon judicial review and the Court must not re-assess the evidence considered by the Officer (*Cortez Escobedo v Canada (Citizenship and Immigration)*, 2023 FC 987 at para 19). Findings of fact should only be overturned "in the clearest of cases" (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12). In this case, the flaws noted are not sufficiently clear, central or significant to render the decision unreasonable (*Vavilov* at para 100).

[34] More importantly, any questionable conclusion of fact in this case does not relate to the Officer's finding that the Applicant and Sponsor were not cohabitating. Therefore, even if I were to rule that the Officer's decision was unreasonable on the issue of whether the marriage was entered into primarily for the purposes of immigration, the Applicant still would not qualify under the Spouse or Common-Law Partner in Canada Class because he was not cohabitating with his spouse as required under s. 124(a) of the IRPR. The failure to meet any of the conditions of s. 124(a) is fatal. Whether or not the marriage is genuine, the Applicant was not cohabitating with his Sponsor, and the Officer's decision on that issue is reasonable (*Said v Canada (Citizenship and Immigration)*, 2011 FC 1245 at para 35).

VII. Conclusion

[35] For these reasons, the Officer's decision is reasonable. The judicial review is therefore dismissed.

[36] The Parties proposed no question of general importance for certification, and I agree that none arise.

JUDGMENT in IMM-5994-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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