

Date: 20081231

Docket: IMM-5356-07

Citation: 2008 FC 1418

Ottawa, Ontario, December 31, 2008

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

EMMANUEL VALERA VALVERDE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application by Emmanuel Valera Valverde (Mr. Valera) challenges a decision by the Respondent denying his claim to permanent resident status.

I. Background

[2] In May 2007, the Canada Border Services Agency received an anonymous call indicating that Mr. Valera had separated from his immigration sponsor, Elizabeth Amador. This allegation led Citizenship and Immigration Canada to conduct separate interviews with Mr. Valera and Ms. Amador enquiring mainly about their recent common activities. As the result of some

perceived factual inconsistencies in their answers, the decision-maker (Officer) concluded that their marital relationship was not genuine and Mr. Valera's claim to permanent residency status was accordingly denied.

[3] The question that must be resolved on this application is whether the Officer's conclusion was reasonable having regard to the evidence she relied upon.

The Decision Under Review

[4] The Officer's notes are quite cryptic but they are sufficient to understand the basis for her decision. The Officer began by confronting the parties with the anonymous information alleging their estrangement. Both Mr. Valera and Ms. Amador denied this allegation. The Officer's notes also set out the details of their respective interviews and concluded with the following:

Sponsor did not have any evidence living at 106 Goldsboro save a letter from the landlord. Did interview with them (marriage) not satisfied they are co-habiting. Discrepancy in answers e.g. Thanksgiving, his birthday, when last time they had sex. Not satisfied with marriage bona fides....

II. Issues

[5] Having regard to the evidence, was it reasonable for the Officer to conclude that this relationship was not genuine?

III. Analysis

[6] Notwithstanding the deference owed to decisions regarding the genuineness of a marriage,¹ I am satisfied that the Officer erred in reaching her conclusion that Mr. Valera and Ms. Amador were not co-habiting. There is no doubt that the Officer was entitled to weigh the evidence and to draw reasonable conclusions from the evidence, but the evidence must reasonably support the conclusions reached. Here it did not.

[7] The Officer perceived that the parties had provided inconsistent answers to her questions during their separate interviews and, on that basis, she found that they were not living together. Upon close examination it is apparent that what the Officer found to be inconsistent answers amounted, at most, to inconclusive ambiguities. The three principal “inconsistencies” noted by the Officer involve responses to questions about their recent sexual activity and about their activity on the Thanksgiving holiday and on Mr. Valera’s birthday. Those exchanges are set out below:

Q. What did you do for Thanksgiving?

A. (Mr. Valera) We did nothing. We stayed home.

A. (Ms. Amador) We ate turkey. We went to my parent’s house.

[...]

Q. Last time had sex?

A. (Mr. Valera) Last week. I don’t remember.

A. (Ms. Amador) On the weekend.

[...]

¹ See *Rosa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 117, [2007] F.C.J. No. 152 at para. 23, but substituting “reasonableness” as the appropriate standard of review.

Q. Birthday (his)?

A. (Mr. Valera) We went out. Eat something. She did not give me gift.

A. (Ms. Amador) 27/08/81. We made a party. People were at the party. We rented a place at Jane and Wilson.

[8] While counsel for the Respondent argued with some justification that Mr. Valera and Ms. Amador were not particularly forthcoming in their responses, the fundamental problem with this evidence is the Officer's failure to ask rather obvious supplementary questions which would have clarified any perceived inconsistencies. For example, one cannot tell from the Thanksgiving exchange if the answers pertained to Thanksgiving Day (Monday) or to their celebration of Thanksgiving, which may well have been on the preceding Sunday. Without that point being clarified by further questions, it is possible to reconcile the two answers.

[9] The exchange concerning the parties' last sexual activity is admittedly vague but it is not inconsistent. The subject interviews were on a Thursday. Sexual activity on the prior Saturday would be consistent with both answers given.

[10] Similarly, Mr. Valera's response that they had gone out to eat on his birthday is not in conflict with Ms. Amador's answer that they had arranged a party at a place at Jane and Wilson. In order to elicit meaningful responses on this point several obvious supplementary questions should have been asked of Mr. Valera such as "Where did you go?" and "Who were you with?". In the absence of clarifying information one is left with inconclusive, but not inconsistent, answers.

[11] A review of the entire transcript of these interviews discloses one or two additional but minor inconsistencies. Many other answers are consistent and suggest a genuine relationship between Mr. Valera and Ms. Amador.

[12] Where the parties to a claimed relationship offer generally concordant answers during their respective interviews, it is dangerous to place too much significance on a few relatively minor inconsistencies about common activities and interests. One is reminded of the Lerner and Loewe lyrics from the song "I Remember It Well" pointing out that marital memories can be fleeting.²

[13] I would add that it is not entirely clear to me whether the Officer's notes constitute a verbatim account of the interviews or an attempt at paraphrasing. Given the importance of such interviews to the interests of an applicant, it would be good practice to record all such exchanges. If the Officer's notes in this case are a precise record of the interviews, they do reflect a certain lack of comfort with English by the parties, which may explain the paucity of detail provided.

[14] Nothing in the Officer's decision suggests that she was influenced by the anonymous tip which led to the investigation into the *bona fides* of this relationship and, in the result, I draw no

² He: We met at nine
She: We met at eight
He: I was on time
She: No, you were late
He: Ah, yes, I remember it well...

such inference. Suffice it to say that information of this type may provide a basis for an investigation but it is inherently unreliable and should almost always be entirely disregarded in the process of making a decision: see *Redman v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1568 (F.C.). I am also satisfied that the Officer treated the parties fairly by disclosing the substance of this information at the outset of their interviews and by allowing them each to respond to it.

IV. Conclusion

[15] In conclusion, this decision must be set aside. If the Respondent continues to have reservations about the legitimacy of this relationship, a fresh and thorough investigation will be required, to be carried out by a different decision-maker.

[16] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is allowed and the decision under review is set aside.

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5356-07

STYLE OF CAUSE: Valverde
v.
MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: December 16, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Mr. Justice Barnes

DATED: December 31, 2008

APPEARANCES:

Patricia Wells
416-535-6873

FOR THE APPLICANT

Brad Gotkin
416-973-2314

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Patricia Wells
Barrister and Solicitor
Toronto, ON

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT