

**Date: 20091204**

**Docket: IMM-1987-09**

**Citation: 2009 FC 1241**

**Ottawa, Ontario, December 4, 2009**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**AGLAYA LUGO GARCIA,**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] The narrative is the key and the very source of understanding the nature of the human condition in a decision. No compromise is ever to be made in pursuit of accuracy of key facts in the evidence. Just as in real estate, the key is location, location, location; in jurisprudence, the key is the story, the story, the story. To leave out key facts may distort their meaning and, thus, may set aside the key evidence in a decision. To set aside key evidence is to do away with justice. Without an accurate narrative, no decision would ever be complete. Even if brief, the summary of key facts must be complete.

## II. Introduction

[2] [9] ... where there is relevant evidence that contradicts the tribunal's finding on a central issue, there is an obligation on the tribunal to analyse that evidence and to explain in its decision why it does not accept it or prefers other evidence on the point in question. The greater the relevance of the evidence, the greater the need for the tribunal to explain its reasons for not attributing weight to them: Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration), (1998) 157 F.T.R. 35, [1998] F.C.J. No. 1425 (QL) (T.D.); Hilo v. Canada (Minister of Employment and Immigration) (1991), 130 N.R. 236, 15 Imm. L.R. (2d) 199 (F.C.A.).

[10] There is no question that the documentary evidence was highly relevant to the issue of the genuineness of the marriage. When cross-examined on her affidavit as to why she made no mention of the documents in her decision, the officer's response was, in essence, that they were only one piece of evidence and that she preferred to rely upon the face to face interviews and her assessment of the spouses' consistency in answer to her questions. Thus it appears that the officer totally discounted the documents and based her decision entirely upon the opinion she formed from the interviews. While I have no doubt that interviews can be an effective tool in uncovering fraud in the H & C process, the results achieved do not relieve the officer of the responsibility to properly analyse the other evidence. Her failure to do so is a reviewable error.

[11] Apart from that conclusion, I also find it difficult to understand how the discrepancies cited by the officer were in fact inconsistent, as most are of a minor nature and easily explained, as indeed, counsel for the applicant did in subsequent correspondence. The applicant and his wife answered most of the questions consistently with one another and demonstrated that they were intimately involved in one another's lives. Applying due deference to the officer's decision as a whole, it does not stand up to "a somewhat probing scrutiny." Accordingly, the application will be granted. (Emphasis added)

*(Terigho v. Canada (Minister of Citizenship and Immigration), 2006 FC 835, 150 A.C.W.S. (3d) 203).*

## III. Judicial Procedure

[3] This is an application for Judicial Review pursuant to paragraph 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of an Immigration Officer,

rendered on April 2, 2009, refusing the Applicant's claim for permanent residence from within Canada as the spouse of a protected person or refugee.

#### IV. Facts

[4] Following an interview held with the Applicant, Ms. Aglaya Lugo Garcia, and her husband, Mr. Joel Velazquez Flores, on March 30, 2009, the Immigration Officer determined that their marriage was not *bona fide*.

#### V. Issue

[5] Did the deciding Immigration Officer breach the principles of fairness and draw erroneous conclusions without regard to the evidence provided in support of Ms. Lugo Garcia's application for permanent residence from within Canada as the spouse of a protected person or refugee?

#### VI. Analysis

[6] During the interview for determination as to whether the couple has a *bona fide* relationship, the Immigration Officer asked Ms. Lugo Garcia and her husband if they preferred to proceed with the interview in English or French, after which, the couple chose English.

[7] It is not clear whether the couple fully recognized the possibility as a right of requesting an interpreter.

[8] In the reasons provided by the Immigration Officer, several of the alleged inconsistencies might have taken place due to flawed communication between the parties and the resulting confusion. Ms. Lugo Garcia and her partner may have been unable to express themselves completely in regard to the validity of their relationship.

[9] In and of itself, this is of such importance, as it touches on the entirety of the assessment made by the Immigration Officer, that the Court's intervention is warranted.

[10] Furthermore, the Immigration Officer is required to specify any contradictory evidence that points to a different conclusion, and explain why this evidence was not retained. The more important the evidence, and the closer it is related to a central issue, the more important it is that the Immigration Officer explain why the evidence is discarded. (In this regard, reference is made to the Applicant's Reply Memorandum, dated July 13, 2009).

[11] This principle is summarized and explained as follows in this Court's decision in *Simpson v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 970, 150 A.C.W.S. (3d) 457:

[44] While it is true that there is a presumption that the Board considered all the evidence, and there is no need to mention all the documentary evidence that was before it, where there is important material evidence on the record that contradicts the factual finding of the Board, a blanket statement in the Decision that the Board considered all of the evidence will not be sufficient. The Board must provide reasons why the contradictory evidence was not considered relevant or trustworthy...

(Reference is also made to *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264).

[12] In the present case, Ms. Lugo Garcia and her husband provided the following evidence, among other things, to demonstrate that their relationship is *bona fide*: marriage certificate; proof of wife's pregnancy; wedding, vacation and other photos; receipts from wedding purchases; common utility and telephone bills; lease of apartment (Exhibits B and C of the Applicant's Record).

[13] Despite the evidence, there is no mention of any of these elements provided by Ms. Lugo Garcia to prove her ongoing relationship with her husband.

[14] As no clear mention is made of evidence that demonstrates elements of a relationship, an error exists which warrants the intervention of this Court.

[15] The Immigration Officer reports several alleged flaws drawn from the interview with Ms. Lugo Garcia and her husband; however, these alleged contradictions, namely, errors in certain dates and addresses, may be of a secondary nature.

[16] During the interview, due to a language challenge, the Immigration Officer may have concluded that contradictions arose; these contradictions may have been avoided had an interpreter been present. It also appears from the affidavits of both Ms. Lugo Garcia and her husband that they had difficulties in attempting to answer fully due to the absence of an interpreter. Consequently, Ms. Lugo Garcia's right to be heard necessitates the Court's intervention.

[17] The Immigration Officer made no significant mention of any explanations provided by Ms. Lugo Garcia and her husband to reconcile what the officer considered to be discrepancies in their testimony.

## VII. Conclusion

[18] For all of the above reasons, the application for judicial review is allowed and the matter is remitted for redetermination by a different Immigration Officer.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be allowed and the matter be remitted for redetermination by a different Immigration Officer.

“Michel M.J. Shore”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-1987-09

**STYLE OF CAUSE:** AGLAYA LUGO GARCIA  
v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** December 1, 2009

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

**DATED:** December 4, 2009

**APPEARANCES:**

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