Federal Court		Cour fédérale

Date: 20100617

Docket: IMM-5751-09

Citation: 2010 FC 659

Toronto, Ontario, June 17, 2010

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

SHI QUING LIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of a decision of a Citizenship and Immigration Officer (the Officer), dated November 4, 2009, where the Applicant's application for permanent resident status under the spouse or common-law partner in Canada class was refused.

Factual Background

[2] Shi Quing Lin (the Applicant), is a citizen of the People's Republic of China who first arrived in Canada under a study permit in 2000. That permit was extended until September 20, 2004 and he was subsequently issued a work permit valid to December 31, 2005. At some point during this time, he and two friends purchased a home furnishings supply business. He was refused an extension of his work permit but remained in the country awaiting the result of his application for permanent residence as a foreign skilled worker which was refused on October 19, 2006.

[3] At the end of June 2006, the Applicant met Evelyn Wong while at a party. He and Ms. Wong began dating and it seems that they moved in together in October 2006. They were married on June 5, 2007. In November 2007 the Applicant applied for permanent resident status under the spouse or common-law partner in Canada class. Both the Applicant and Ms. Wong attended an interview with the Officer in September 2009 and again in October 2009. The application was refused and is the subject of this judicial review.

[4] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada held that the standard of review analysis need not be conducted in every case and that if the standard of review on the issue is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. In light of this and the past jurisprudence of this Court, I find that the Officer's decision in this case is to be held to the standard of reasonableness (*Dios v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1322, 337 F.T.R. 120 at paragraph 28). Thus, the Court will only intervene if the Officer's decision is unreasonable as it falls outside the "range of

possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at paragraph 47).

[5] The *Immigration and Refugee Protection Regulations* (the Regulations), at section 124(a), set out that in order for a foreign national to be a member of the spouse or common-law partner in Canada class, they must be the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada. Section 4 of the Regulations provides that no foreign national shall be considered a spouse if the marriage is not genuine, and was entered into primarily for the purpose of acquiring any status or privilege under the Act.

[6] In this case, the Applicant's application for permanent residence as a member of that class was rejected on the grounds that the Officer did not believe that the Applicant cohabits with his sponsor, and he did not believe that the marriage is genuine and was not entered into primarily for the purpose of acquiring status under the Act. The Applicant has argued two grounds which he submits merit the Court's intervention.

[7] With regard to the first ground, the Applicant contends that the Officer focused primarily on the timing of his marriage and then drew a negative inference from it. In my view, this ground for judicial review cannot succeed. As accepted by Justice Snider in *Sharma v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1131, [2009] F.C.J. No. 1595, the timing of a marriage can be a relevant factor in assessing the genuineness of the marriage (paragraph 17). This factor can weigh in favour of an applicant or, as in this case, can lead the officer to draw a negative inference.

[8] Furthermore, the consideration of this factor is not contrary to the policy set out in the Spousal Policy (IP 8 – Spouse or Common-law partner in Canada Class). That policy requires the Applicant to prove that there is a *bona fide* relationship as one of the required criteria for the exemption and the timing of the marriage can clearly be used to assess the *bona fide* of the relationship.

[9] As for the second argument that the Officer failed to weigh the totality of the evidence put before him, after having considered both parties arguments and reviewed the Certified Tribunal Record, I must conclude that this ground merits the granting of this judicial review and is more than a request to have the Court reweigh the evidence.

[10] The Applicant and Ms. Wong submitted bank statements, bills and other correspondence showing that they shared an address, copies of their driver's licences showing the same address as well as leases and a joint bank account statement. These documents would seem to indicate the Applicant and his sponsor do cohabit, and the Officer did not explain why she found that the T4 slips outweighed the other evidence contrary in reaching her determination. The submissions also included photos of the Applicant and Ms. Wong at different points in time and statements on their relationship. The notes taken during the interviews also show that both spouses provided roughly the same answers to the questions asked by the Officer about their relationship (Certified Tribunal Record at pages 32 to 43). I am not saying that these pieces of evidence are determinant in assessing the genuineness of the marriage, but I do find that these pieces of evidence were relevant but were not noted by the Officer and were not weighed against the others.

[11] I am of course mindful of the presumption that a tribunal is presumed to have considered all of the evidence before it. However, in this case, there is relevant evidence that runs contrary to the Officer's conclusion on a central issue and the Officer should have explained why he did not accept it or preferred other evidence (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 at paragraphs 14 to17; *Pradhan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1500, 52 Imm. L.R. (3d) 231 at paragraph 14).

[12] The Applicant has asked for costs in these proceedings pursuant to rule 22 of the *Federal Courts Immigration and Refugee Protection Regulations*, S.O.R./93-22. However, I do not find that such special reasons exist and will not order costs.

[13] No question for certification was proposed and none arises.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review be allowed. The matter is remitted back to a different Officer for redetermination. No costs are allowed.

"Michel Beaudry"
Judge

APPENDIX

Immigration and Refugee Protection Act, S.C. 2001, c. 27.

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.

Immigration and Refugee Protection Regulations, S.O.R./2002-227.

4. For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.	4. Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait, le partenaire conjugal ou l'enfant adoptif d'une personne si le mariage, la relation des conjoints de fait ou des partenaires conjugaux ou l'adoption n'est pas authentique et vise principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi.
124. 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.	124. Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes : a) il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada; b) il détient le statut de résident temporaire au Canada; c) une demande de parrainage a été déposée à son égard.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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