Federal Court  Cour fédérale

Date: 20110526

Docket: IMM-5213-10

Citation: 2011 FC 621

Ottawa, Ontario, May 26, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

LUCKY OSAYUKI AMAYEANVBO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. The facts

[1] The applicant is a 31 year old citizen of Nigeria. His spouse is a 39 year old Canadian citizen.

[2] The applicant first attempted to come to Canada in 2008. He applied for a student visa, but the visa was refused. Later that year, the applicant applied for a visitor's visa from the Canadian embassy in Nigeria, which he obtained on December 17, 2008. The applicant arrived in Canada on December 28, 2008.

[3] The applicant was detained on his arrival to Canada. The officer who examined him was not satisfied that he was a genuine visitor. The officer noted that the applicant did not know what he would visit in Canada, that his luggage did not correspond with the duration of his stay, and that he was traveling with all his school diplomas. During this examination, the applicant declared that his life was not in danger in Nigeria.

[4] The applicant made a refugee claim three days later, on December 31, 2008. His refugee claim was denied on November 24, 2009.

[5] The applicant was released from detention on January 2, 2009. He met his wife about six weeks later, on February 14, 2009, in a supermarket in Montreal. The sponsor stated that the applicant proposed to her in March 2009, and they began making plans to marry in early April. The applicant stated that he proposed in April of 2009. The couple married on June 20, 2009. The applicant had been living in Ottawa, but moved in with his sponsor in Montreal after the marriage. It was the first marriage for both them. The sponsor has five children from previous relationships.

[6] They filed a sponsorship application on July 20, 2009, and were interviewed by the officer on August 20, 2010. The negative decision was rendered August 26, 2010. There is nothing on the

record to indicate whether the sponsor appealed the negative decision to the Immigration Appeal Division [IAD], and if so, what the status of the appeal is.

II. Decision under review

[7] The officer identified 9 different problems with the evidence provided by the applicant and his wife during the interviews. Because of these problems, the officer was not satisfied that the relationship between the applicant and his sponsor was genuine.

A. Birthdays and family celebrations

[8] The sponsor stated that they had a birthday party for her with about 30 guests, and that only her two older children were present. In contrast, the applicant stated that there were approximately 20 guests at the party, and four of his spouse's five children were present.

[9] When asked about Valentine's Day, the sponsor stated that she celebrated the day with four of her children, but the applicant stated that only two of the four children were present.

[10] When asked about the last time they had members of their family over for dinner, the applicant stated that it was sometime after his spouse's birthday, but he could not remember exactly. The sponsor stated that it was after her sister's death, which was only a week before the interview with the officer.

B. Religion

[11] The sponsor did not know the name of the church the applicant attended, although she stated that she frequently drove him to church. She stated that the last time she drove him to church was the previous Sunday, but the applicant said that he had gone alone to church the previous Sunday. The sponsor stated that she never discussed religion with her husband, other than events that took place at his church, but the applicant said that they frequently discuss religion.

C. Cultural differences

[12] When asked about the last time that the couple discussed cultural differences, the applicant explained that he could not remember. The sponsor said that they regularly discuss cultural differences with the children, and that the last discussion took place about two or three weeks previously.

D. Habits and favorite activities

[13] The sponsor said that her favorite activities were watching children's shows and going to the movies, while the applicant thought that her favorite activity was to spend time on the social networking websites Facebook and MSN. The applicant stated that his favorite activity was to read the newspaper and use the internet, while his sponsor stated that his favorite activity was to go to the movies, participate in church activities and play soccer.

[14] The officer expressed surprise that the applicant and his sponsor gave different answers regarding his health status and, more precisely, on a forthcoming surgery. The sponsor did not seem to know the date of the surgery.

E. Sponsor's knowledge of the applicant's immigration history

[15] The officer noted that the sponsor did not know much about the applicant's immigration history in Canada. She did not know why he was detained when he first arrived, and she did not know basic information about the status of his refugee claim, even though most of the procedural steps took place during their marriage.

F. Cohabitation

[16] The applicant and his sponsor agreed that they began cohabitating in June 2009. However, the sponsor did not know the address of the place the applicant was staying prior to moving in with her. She also stated that his home burned down in May 2009, but the applicant stated that it burned down in March 2009. The sponsor explained that prior to living together, he lived in Ottawa and she did not visit him there, as she did not want to leave her children alone. The officer did not accept this explanation, noting that her two oldest children were 17 and 18 years old, and could have looked after the younger children, who are 8 and 10 years old. Alternatively, she could have brought all four children to Ottawa with her to visit the applicant.

G. Children and family links

[17] The officer found that the applicant had little contact with the sponsor's children. He did not know the name of the school they attended, and could not remember the last gift given to the children. The couple also gave different answers regarding the last time they discussed having children together.

H. Meeting, marriage and engagement

[18] The officer found the timing of the marriage to be suspicious. The sponsor said that they met on February 14, 2009. The applicant said they met sometime in February, 2009. They were married about four months later, on June 20, 2009. The officer noted that the sponsor had never been married before, despite having five children from previous relationships. The officer questioned why someone who chose not to get married until age 39 would accept a proposal from a man she had only known for four months. The officer also found that the applicant's decision to marry a woman he had known only a few months was not consistent with the culture or practice of Nigeria.

[19] The officer also noted that the applicant and his sponsor did not agree on the number of people invited to their wedding, or the cost of the wedding. The applicant stated that about 30-40 people were invited, and the wedding cost about $5000-6000. The sponsor stated that about 60 people were invited, and guessed the wedding cost around $4000, or possibly more than that.

I. Immigration history

[20] The officer noted that the applicant was refused a student visa to Canada, on the grounds that the officer was not satisfied the applicant would return to Nigeria at the end of his authorized stay. The applicant subsequently obtained a visitor's visa, but was detained on arrival, on the grounds that he was not a genuine visitor. The applicant made a refugee claim three days after declaring that his life was not in danger in Nigeria. He applied for permanent resident status only a few months after arriving in Canada. This immigration history led the officer to question the applicant's respect for Canada's immigration laws.

[21] Given these inconsistencies in the evidence given by the applicant and his sponsor, the officer concluded that the applicant and his sponsor had not satisfied him that the relationship was genuine.

II. The statutory scheme

[22] Canadian citizens and permanent residents may, subject to the *Regulations*, sponsor a foreign national who is a member of the family class (s 13(1) of *Immigration and Refugee Protection Act* [*IRPA*], SC 2001, c 27). In this case, the applicant was a member of the spouse or common-law partner in Canada class (s 124 of the Immigration and Refugee Protection Regulations [*Regulations*]).

[23] The key provision in this case is section 4(1) of the *Regulations*, which states:

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 partnership or conjugal partnership:	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 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.

[24] According to the jurisprudence, section 4(1) of the *Regulations* must be read conjunctively, that is the questioned relationship must be not genuine and entered into primarily for the purpose of acquiring any status or privilege under the Act: *Donkor v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1089 at para 12.
[Emphasis added]

III. Issues

[25] This Court finds that the only issue raised by the applicant is whether the officer's decision is reasonable.

IV. The standard of review

[26] Relying on *Dunsmuir v New Brunswick*, 2008 SCC 9 and *Canada v Khosa*, 2009 SCC 12, the standard of review is reasonableness. Determining whether a relationship is genuine or entered into for the purpose of obtaining status under the *IRPA* is primarily a factual determination.

A. The applicant's submissions

[27] Although the applicant raises three issues in his memorandum of fact and law, the applicant primarily makes a general argument that the decision is unreasonable. In particular, the applicant

argues the contradictions and inconsistencies identified by the officer are unreasonable, and that the officer ignored relevant evidence.

(1) The negative credibility inferences are unreasonable

[28] The applicant relies on *Sheik v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 568, where Justice Lemieux held that many of the alleged inconsistencies in the applicant's evidence were exaggerated, and that: "A refugee claim should not be determined on the basis of a memory test" (para 28). The applicant argues that there were no real or significant inconsistencies in the evidence. For example, the difference in the number of wedding guests was not so significant as to be a true inconsistency. Similarly, the variations in the number of guests at the sponsor's 39th birthday party are not significant, and neither is the fact that they do not recall whether two or four of the children were present. These are just ordinary memory problems. The applicant also argues that there is no real contradiction in their answers about religion, or discussions on cultural differences.

[29] The applicant suggests that the officer unreasonably rejected the sponsor's explanation that she did not visit the applicant in Ottawa because she did not want to leave her young children in the care of her teenagers. The applicant also argues it was unreasonable for the officer to draw a negative credibility inference from the applicant's failure to know the name of the school his step-children attended, or from the sponsor's lack of knowledge regarding the status of the applicant's refugee claim.

(2) The officer ignored evidence

[30] The applicant argues that the officer ignored important evidence that countered the negative credibility findings. Specifically, the officer makes no mention of the fact that the sponsor had a miscarriage in the late summer of 2009, nor does he refer to documentary evidence corroborating the relationship, such as the lease, the joint bank account, the cards they sent each other, photographs of the applicant with his step-children, photographs of the applicant supporting his wife and her family at her mother's funeral. The officer also failed to consider that the sponsor's sister passed away the week of her interview, and the funeral was the day following the interview, which may have affected her demeanor and her memory.

[31] Finally, the applicant submits that the officer only referred to 45 of 269 questions, and did not refer to any of the favorable evidence given by the applicant and his sponsor. The applicant alleges that the officer focused unduly on the applicant's immigration history, and not on the question of whether the marriage was genuine.

B. The respondent's submissions

(1) The credibility findings are reasonable

[32] The respondent submits that the applicant has a duty to establish, on a balance of probabilities that he did not get married solely to obtain status in Canada. The applicant failed to do so, and it is not for this Court to re-weigh the evidence.

[33] The respondent's position is that the officer fulfilled his duty to make clear credibility findings, supported by examples as to why the applicant's testimony was not accepted: *John Doe 2004 v Canada (Minister of Citizenship and Immigration)*, 2004 FC 360. The respondent also relies on Justice Blanchard's decision in *Tameh v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1468, where he held that it is reasonable for a decision maker to reject testimony based on several serious and material inconsistencies.

[34] The respondent notes that the applicant does not dispute the existence of disparities between the testimony of the applicant and his sponsor. The respondent notes that there are extensive contradictions relating to events that took place recently, in the week and month before the interview, as well as contradictions that relate to important life events, such as their plans to have children. These inconsistencies cannot be explained solely by memory problems. The respondent argues that memory has been an important aspect of credibility assessment: *Faryna v Chorny*, [1951] BCJ No 152 at para 10; cited by Justice Phelan in *Hassan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1136 at para 12.

[35] The respondent points to case law holding that "a general finding of lack of credibility on the part of an applicant may extend to all relevant evidence emanating from his testimony" (*Mugu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 384 at para 84). The respondent also notes that proof of a romantic relationship is not sufficient to satisfy the test in section 2 of the *Regulations*. A romantic relationship may not amount to a conjugal or common-law relationship: *Mbollo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1267.

(2) The officer properly considered all of the evidence

[36] The respondent submits that the officer is presumed to have considered all the evidence presented, and points out that the officer took extensive notes during the interview. The respondent argues that the officer did not have a duty to address all of the questions asked in the interview, and did not selectively address the evidence given in the interviews. The respondent argues that there is no duty to attach all of the questions and answers to the decision, and that even if there was, the applicant should have requested it. The decision contained sufficient details for the applicant to know the reasons he was refused.

[37] The respondent also argues the officer reasonably considered the sponsor's testimony that her sister passed away the week before. The officer asked her if she was able to continue the interview, and she replied that she could. There was no reviewable error in the failure to refer to the sister's death in the decision under review.

[38] Finally, the respondent also submits that it is entirely appropriate for the officer to consider the applicant's immigration history, relying on *Rosa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 117, and *McBean v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1149, among others.

V. Analysis

- Was the officer's decision reasonable?

[39] This case turns on credibility. The Court agrees with the applicant that several of the alleged inconsistencies seem insignificant. For example, it is not inconsistent that the applicant said they met in February 2009, and the sponsor specified that it was on February 14th, 2009. The fact that the applicant and his sponsor had differing responses on the number of guests and which of the sponsor's children were present at her 39th birthday party also seems insignificant. The applicant submitted pictures from this party. On pages 28 and 29 of the Application Record, there are two pictures from the birthday party. From the pictures, it is clear that there were a number of guests, and that the applicant and the sponsor were both there. In light of the pictures showing that the party did take place, it is difficult to see how their failure to remember the exact number of guests undermines the genuineness of their relationship, unless the officer believes the pictures were faked.

[40] Other answers that the officer finds to be contradictory could be reconciled. For example, when asked about religion, the sponsor states that they do not speak about religion but that the applicant "tells me about stuff that happen in church" (Certified Tribunal Record, p. 14). The applicant simply states that "I speak about religion". It could be that when the applicant tells his wife about things that happened in church, he interprets this as "speaking about religion", but she does not.

[41] Was there sufficient evidence before the officer to support a negative credibility finding? The officer is entitled to consider the applicant's immigration history, and also the fact that the sponsor did not know much about some aspects of the applicant's life. She did not know what kind of church he attended. She knew very little about his immigration status. She did not know his upcoming surgery date. They differed on when they last discussed having children.

[42] The applicant has also not established that the officer ignored significant evidence. It is not a reviewable error for the officer to only refer to 45 questions from the interview. The officer was simply pointing out what he considered the key inconsistencies that concerned him, and is not required to refer to all or even most of the questions and answers.

[43] The applicant's strongest argument though, is that the officer ignored the positive evidence of a genuine relationship. In particular, the officer did not refer to the photos and documentation, as well as the interview answers which did indicate that they were in a genuine relationship.

[44] The officer has provided reasons outlining his concerns with the evidence presented by the applicant, and given the few inconsistencies identified; the negative decision was not, in the Court's view, reasonably open to the officer on these facts. Another officer might have come to another conclusion, the Court finds, that in this case, the conclusion reached by the officer was not reasonably open, based on the minor inconsistencies found.

[45] The application is allowed. The officer has not provided sufficient support for his negative credibility findings. This is a case where the officer has ignored significant evidence of a positive, genuine relationship by unduly focusing on minor inconsistencies.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for leave is allowed.

2. There is no question of general interest to certify.

"André F.J. Scott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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