

Federal Court



Cour fédérale

Date: 20111219

Docket: IMM-7575-10

Citation: 2011 FC 1488

Ottawa, Ontario, December 19, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

JASBIR GRABOWSKI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Jasbir Grabowski is a citizen of India and was a permanent resident of Germany. He obtained a permit to work at a Subway restaurant in Burnaby, BC. Since working there for four days in January, 2009, he has been unemployed.

[2] Soon after he lost his job, Mr. Grabowski met his current spouse, who is a permanent resident of Canada. They married in June 2009. Mr. Grabowski then applied for a permanent residence visa.

[3] An immigration officer interviewed the couple in November 2010. After the interview, and after reviewing additional documentation provided by them, the officer denied Mr. Grabowski's application because she was not satisfied that the marriage had not been entered into primarily for the purpose of acquiring status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[4] Mr. Grabowski argues that the officer treated him unfairly by not allowing him an interpreter at the interview. He also submits that the officer's decision was unreasonable. He asks me to quash the decision and order a reconsideration by a different officer.

[5] I can find no basis for overturning the officer's decision. Mr. Grabowski was informed that he could bring an interpreter to the interview and chose not to do so. In addition, the officer's conclusion was supported by the evidence and, therefore, was not unreasonable.

[6] The two issues are:

1. Did the officer treat Mr. Grabowski unfairly?
2. Was the officer's decision unreasonable?

II. Factual Background

[7] Mr. Grabowski arrived in Canada in January 2009 on a temporary work permit allowing him to work in a fast food restaurant. He was only employed for four days. He claims he was fired, but his employer informed Citizenship and Immigration Canada [CIC] that he failed to show up for work.

[8] On January 15, 2009, Mr. Grabowski met Ms. Sukhwinder Kaur Judge Grabowski, a permanent resident of Canada. They married in June 2009. Mr. Grabowski then applied for a permanent residence visa in the “Spouse or Common-Law Partner in Canada” class.

[9] In October 2010, the officer advised Mr. Grabowski and his wife that an interview was scheduled for November 9, 2010. They were advised to arrange for an interpreter, if necessary, and to provide certain documents.

[10] On the day of the interview, Mr. Grabowski and Ms. Judge Grabowski both attended, but without an interpreter. The officer conducted the interview in English, and at the end of the interview advised the couple that they could provide further written submissions before a decision would be made. Further submissions were received on November 11, 2010.

[11] On December 9, 2010, the officer advised Mr. Grabowski by letter that his application had been refused because she was not satisfied that the marriage had not been entered into primarily for

the purpose of acquiring status under IRPA, pursuant to paragraph 4(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

III. The Officer's Decision

[12] The officer summarized Mr. Grabowski's brief work history in Canada, and the conflicting versions of events between Mr. Grabowski and his employer. The officer also noted Mr. Grabowski's explanation for why he had not otherwise worked since arriving in Canada. He explained that he could not work for any other employer since he did not have an open work permit. When asked why he did not apply to change the terms and conditions of his permit, he said that he had also applied for jobs at other restaurants.

[13] The officer observed that Mr. Grabowski had an abundance of work in Germany as a cook, yet he did not return to Germany after losing his job in Canada. The officer questioned Mr. Grabowski's motives for coming to Canada. He had stated that he wanted to gain "international experience". However, the officer found that it was reasonable to expect a person who wished to advance his career to have been more determined to find employment. Accordingly, the officer found that Mr. Grabowski's reasons for coming to Canada were not credible.

[14] The officer also noted discrepancies arising from Ms. Judge Grabowski's testimony and the written material in the file. Ms. Judge Grabowski had stated that she had become friends with Mr. Grabowski's sister in college (between 1996 and 1999) while in India, and that they kept in touch from time-to-time by telephone. When the sister told her that Mr. Grabowski was coming to

Canada, she said he could contact her when he arrived. She stated that she had never talked to Mr. Grabowski before January 2009. However, the officer noted that later in the interview Ms. Judge Grabowski stated that she had met him at family functions “a long time ago”.

[15] The officer then observed that in a written questionnaire, Mr. Grabowski stated that he had first met Ms. Judge Grabowski in January 1994, which was before she and his sister had met. Later, in an addendum to the questionnaire, he stated that he had met her in January 1994 when introduced by his sister. The officer found that the evidence surrounding the circumstances of their meeting was not credible.

[16] For these reasons, the officer could not be satisfied that the marriage had not been entered into primarily for the purpose of obtaining status in Canada, contrary to s 4(1)(a) of the IRPR, and refused the application.

IV. Issue One – Did the officer treat Mr. Grabowski unfairly?

[17] Mr. Grabowski argues that the officer treated him unfairly by not providing an interpreter at the interview, or by not giving him the opportunity to arrange one for himself. He says that he told the officer that he had difficulty understanding her.

[18] It does not fall to CIC to provide applicants with an interpreter. The applicant must be given the opportunity to arrange for an interpreter, and the officer must ensure that the applicant can

understand the language of the interview: *Kazi v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 733, at para 17.

[19] Here, Mr. Grabowski was informed that if he did not speak English, he could arrange to bring an interpreter to the interview. He had sufficient time – three weeks – from the notification date to find an interpreter. Further, the officer did not record any difficulty in communicating in English during the interview.

[20] In the circumstances, I can see no breach of the duty of procedural fairness.

V. Issue Two – Was the officer’s decision unreasonable?

[21] Mr. Grabowski also argues that the officer’s conclusion is not intelligible or transparent. He points to certain facts the officer overlooked:

- The marriage was consummated the night of 8 June 2009, as evidenced by a hotel receipt;
- The couple had been cohabiting as husband and wife since the marriage, as corroborated in letters from friends;
- They were renting a basement suite in Squamish; and
- They attended services at a Sikh Temple together.

[22] Mr. Grabowski submits that this evidence proves that the marriage is genuine.

[23] He also contends that the officer failed to explain how she reached the conclusion that the marriage was entered into primarily for the purpose of acquiring status under IRPA. In particular, he

questions the significance of his work history. More important was the evidence of the genuineness of the marriage: *Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1131.

[24] The test the officer had to apply is disjunctive – a marriage could be found to be of bad faith either if it was not genuine or if it was entered into primarily for the purpose of acquiring status under IRPA. There is an interrelationship between the two prongs of the test. Evidence of a genuine marriage might suggest that it was not entered into for the purpose of gaining status in Canada. There is “a strong link between the two prongs of the test” (*Sharma*, above, at para 17). However, evidence of “genuineness” is not necessarily determinative of the question of whether the marriage was entered into for an immigration purpose.

[25] Here, the officer clearly concentrated on the question of whether the marriage had been entered into primarily for immigration purposes. She believed that Mr. Grabowski had come to Canada for a purpose other than his stated goal of gaining work experience. She also found the parties not to be credible in their accounts of when they met. The evidence that the officer allegedly overlooked would not have allayed her concerns.

[26] In my view, as described above, both of those findings were supported by the evidence before the officer. In addition, the officer intelligibly and clearly explained her findings in her reasons. Accordingly, the officer’s conclusion was reasonable and adequately explained.

VI. Conclusion and Disposition

[27] I cannot conclude that Mr. Grabowski was treated unfairly. He was not denied access to an interpreter, nor does it appear that there were any language difficulties during the interview. Further, the officer's conclusion that the marriage was entered into for an immigration purpose was supported by the evidence and set out in her reasons. I can find no basis for overturning that conclusion and must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Regulations, SOR/2002-227

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

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.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7575-10

STYLE OF CAUSE: JASBIR GRABOWSKI v MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: December 19, 2011

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