

Federal Court



Cour fédérale

**Date: 20131106**

**Docket: IMM-824-13**

**Citation: 2013 FC 1125**

**Montréal, Québec, November 6, 2013**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**OLGA CAUIA**

**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*, SC 2001, c 27 [the Act] of a decision of an immigration officer on January 16, 2013. The officer denied the applicant's sponsored application for permanent residence under the spouse or common-law partner in Canada class as she was not satisfied that the common-law partnership was genuine and not entered into primarily for the purpose of acquiring status or

privilege as stated in subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-226, as amended [Regulations].

## FACTS

[2] The applicant is a 30-year-old citizen of Moldova. Between 1998 and 2008 she studied in Romania, though her Romanian diploma is not recognized by the Moldovan government.

[3] The applicant arrived in Canada on a visitor's visa on June 23, 2008. She claimed refugee status on June 12, 2009 after a protest and violent government crackdown (which the applicant alleges targets students who have studied in Romania) took place in Moldova following an election. Her claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board [the Board] on February 17, 2012.

[4] On June 6, 2012, the applicant filed an application for permanent residence in the spouse or common-law partner in Canada class under section 12 of the Act, sponsored by Volvick Edouard [the sponsor].

[5] In support of her application for permanent residence through sponsorship, the applicant alleges the following facts:

- i. she was introduced to her sponsor by a French classmate around November 2009;
- ii. she started taking dance lessons with the sponsor at his dance studio;
- iii. she began to participate in ballroom dancing competitions with her sponsor;

- iv. the sponsor officially moved in with her in February 2011 when he signed a lease renewal, leaving his former apartment where he lived with his brother;
- v. she is often at the sponsor's dance studio where she not only dances but also teaches and manages the business by paying bills, organizing the office, verifying income, and doing all of the office work;
- vi. she and the sponsor share their lives; they live together, share the same accountant, love each other, and she cooks food for him every night;
- vii. the sponsor has two children aged eleven and four with his ex-wife, from whom he is separated; and
- viii. the sponsor has a sister living in New York and a niece and nephew, aged 21 and 17. The niece and nephew came to visit the sponsor in the summer of 2011 and stayed with the sponsor's brother. The niece and nephew were often at the dance studio and that the sponsor organized a weekend in a country house in Victoriaville for the entire group, including the applicant. The applicant also claims that she went out to eat with the sponsor's niece and nephew without him being there.

[6] The Québec government issued a Québec Selection Certificate to the applicant on January 10, 2013.

[7] The applicant and the sponsor were each called to an interview with the officer on January 16, 2013. The officer's decision was rendered on January 17, 2013.

## **THE DECISION UNDER REVIEW**

[8] The officer found that the applicant undermined her credibility by deliberately misrepresenting herself to Canadian immigration officials by claiming that she would return to Moldova and to her fiancée in Romania on her initial application for a temporary resident permit for entry into Canada. When questioned by the officer, the applicant stated that she wished to stay in Canada to help her sister with her baby and that there was political unrest and she could not go back home.

[9] The officer also noted several inconsistencies in the answers the applicant and the sponsor gave in their interviews.

[10] The officer was not satisfied by the explanations provided by the couple to justify the inconsistencies apparent throughout their testimonials. She found that the couple's answers were evasive and non-committal, further demonstrating the couple possesses limited knowledge of one another.

[11] The applicant does not appear to be involved with the sponsor on an emotional level and does not share her life with him beyond the help she offers in the management of his dance studio. Her lack of knowledge of the sponsor's financial situation and custodial arrangement of his children provide little indication of emotional involvement and investment on her behalf. The applicant appears to be minimally implicated in the sponsor's family life.

[12] Finally, the officer concluded that the documentation provided by the couple does not sufficiently demonstrate evidence of a genuine common-law relationship. Moreover, the applicant's life insurance policy designates the sponsor as a beneficiary at fifty percent and her sister at fifty percent, a division that the applicant could not explain when asked. The sponsor has also provided evidence of his life insurance, where he names his daughter Terry as sole beneficiary at one hundred percent.

[13] The officer stated that based on the interviews conducted and answers obtained from the testimonials, she is not satisfied of the *bona fides* of the relationship. The numerous discrepancies in their answers make the authenticity of the union questionable. The officer concluded that the relationship is one of convenience and entered into primarily for the purpose of acquiring status or privilege as stated in section 4 of the Regulations.

#### **STANDARD OF REVIEW**

[14] It is well recognized that the finding that a marriage or common-law partner relationship is not genuine is reviewable on a standard of reasonableness (*Gangurean v Canada (Minister of Citizenship and Immigration)*, 2012 FC 286 at para 9 [*Gangurean*]; *Essaidi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 411 at para 10 [*Essaidi*]; and *Bustamante v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1198 at para 20).

#### **ANALYSIS**

[15] At the outset, in response to the applicant's arguments about the standard of proof applied by the officer, I am not persuaded that the mere use of the word "convinced" demonstrates that the

officer applied a higher standard of proof than what was required. The remainder of the reasons are in line with the application of a “balance of probabilities” standard and there exists no other evidence apart from this word choice to indicate that the officer applied an incorrect burden of proof.

[16] The applicant suggests that the officer ignored documentary evidence and chose to focus only on the eight discrepancies that she found in the testimonies of the applicant and the sponsor. I do not agree with this characterization of the decision. The officer did indeed consider the documentary evidence, acknowledging that the applicant and sponsor live together and are dance partners. She was not convinced, however, that this demonstrated a genuine common-law relationship. The officer also made direct reference to the evidence submitted regarding the insurance policies of the applicant and her sponsor, though she drew a negative inference from the fact that the sponsor did not name the applicant as beneficiary and the sponsor was only a fifty percent beneficiary for the applicant. I further note that there exists a presumption that the officer considered all of the evidence before her even if she did not make specific reference to each piece of evidence (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ 598).

[17] The officer found several discrepancies in the applicant and sponsor’s testimonies. When she gave the couple an opportunity to explain these inconsistencies, she was not convinced by their justifications. More particularly, it was reasonable for the officer to draw a negative inference from the lack of knowledge of the applicant about the sponsor’s finances in the period after they claim to have become a couple.

[18] It was also open to the officer to draw a negative inference from the fact that the applicant did not seem to be involved in the sponsor's family life. Given that the sponsor seems to play an important role in the life of his children, it was open to the officer to draw a negative inference from the fact that the applicant and the sponsor did not discuss his children.

[19] While the inconsistencies identified by the officer relating to the baptism party and the video rental may seem inconsequential, they are important in assessing the daily life of the couple (*Gangurean*, above, at para 13), particularly when this may very well have been the last weekend that the couple would spend together, as the applicant was facing a removal order. The applicant did not know the whereabouts of the sponsor, while the sponsor did not know that the applicant would be meeting with her lawyer that night. Given that these events occurred only a few days before the interview, they cannot be explained by a lapse in memory.

[20] When reviewing a decision on the standard of reasonableness, this Court may not substitute its own evaluation of the evidence, but rather must show deference to the findings of the decision maker and focus on the justification, transparency and intelligibility of the decision (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 59). The officer considered and made reference to the body of evidence before her and drew the reasonable inference that when considered as a whole, the inconsistencies in the testimonies were enough to conclude that the common-law relationship was not genuine (*Essaidi*, above, at para 18). As such, the decision that the relationship of the applicant and the sponsor was not *bona fide* as set out in section 4 of the Regulations falls within the range of possible, acceptable outcomes which are

defensible in respect of the facts and law, and therefore does not warrant this Court's intervention (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

[21] For these reasons, this application is dismissed.



**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

This application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-824-13

**STYLE OF CAUSE:** *Olga Cauia v The Minister of Citizenship and Immigration*

**PLACE OF HEARING:** MONTRÉAL (QUÉBEC)

**DATE OF HEARING:** OCTOBER 17, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:**

TREMBLAY-LAMER J.

**DATED:** NOVEMBER 6, 2013

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