Federal Court  Cour fédérale

Date: 20180111

Docket: IMM-2079-17

Citation: 2018 FC 27

Ottawa, Ontario, January 11, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

AMANDEEP

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a Visa Officer's [the Officer] decision of April 24, 2017 rejecting the Applicant's spousal sponsorship application under the Spouse or Common Law Partner in Canada class. For the reasons that follow, this judicial review is dismissed.

I. Background

[2] The Applicant and his spouse began dating in March 2012. They began cohabitating on April 1, 2014.

[3] On his November 2, 2015 application for permanent resident status through the Canadian Experience Class, the Applicant listed himself as "single" with no dependents. According to the Applicant and his spouse, the common law relationship concept does not exist in their respective cultures. Furthermore, both families' disapproved of their relationship.

[4] On December 6, 2015, they married.

[5] On January 1, 2016, the Applicant's spouse's application for permanent residence as a Member of the Spouse or Common-Law Partner in Canada Class was processed and "locked in."

[6] On February 27, 2017, the Applicant's spouse received a letter from Immigration, Refugees, and Citizenship Canada [IRCC] requesting further information on the relationship timeline between herself and her husband.

[7] On April 24, 2017, the application was rejected because the Applicant was not an eligible sponsor for his spouse.

II. Decision Under Review

[8] The April 24, 2017 decision consists of a letter and the Global Case Management System [GCMS] notes of the Officer.

[9] In the letter, the Officer states that the Applicant was an ineligible sponsor because he failed to declare his spouse to IRCC on his own application for permanent residence, at his landing interview, or at the time he became a permanent resident. As a result, IRCC could not conduct an examination of the spouse. The Officer relied upon s. 125(1)(d) of the *Immigration and Refugee Protection Regulations* [IRPR].

[10] In the GCMS notes, the Officer states that he was satisfied that the Applicant and his wife met the definition of a conjugal relationship prior to landing because "beyond probabilities" they shared "sleeping arrangements, personal behaviour, shared services, shared social activities, economic perception, and social perception…"

[11] As such, the Officer rejected the Applicant's spouse's application.

III. Issue

[12] The parties agree that the only issue is whether the Officer's decision that the Applicant was ineligible to be a sponsor is reasonable.

IV. Standard of Review

[13] On the issue of whether the Applicant's facts satisfy the legal test for common law spouses, as this is a question of mixed fact and law, it is reviewable on the reasonableness standard (*Canada (Director of Investigation and Research v Southam Inc*), [1997] 1 SCR 748 at para 35; *Dunsmuir v New Brunswick,* 2008 SCC 9 at para 53[*Dunsmuir*]).

[14] Further, the standard of review of a visa officer's decision relating to the issue of cohabitation and the Spouse or Common-Law Partner class is reasonableness (*Nzau v Canada (Citizenship and Immigration)*, 2013 FC 74 at para 8; *Rakheja v Canada (Citizenship and Immigration)*, 2009 FC 633 at para 16).

V. Analysis

[15] The Applicant argues that the Officer failed to consider the well-established legal test for determining whether the Applicant was in a common law relationship. The Applicant argues that the Officer only focused on the fact of cohabitation without considering other factors such as mutual commitment to a shared life, exclusivity, permanence, interdependence, and presentation as a couple.

[16] For the purposes of the Spouse or Common-Law Partner in Canada class, whether the spouse and sponsor exist in a common law relationship is governed by the IRPR and IRCC policies and guidelines.

[17] In the IRPR, a "common-law partner" is defined as:

> …in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

[18] In defining a conjugal relationship, the Operating Procedures (OP 2- Processing Members of the Family Class) [Operating Procedures] of the Respondent cite the Supreme Court of Canada's decision in *M. v H.*, [1999] 2 SCR 3 [*M. v H.*] for determining whether applicants reside in a conjugal relationship. The Operating Procedures note that a number of factors are considered, including shared shelter, social activities, economic support, and societal perception as a couple. The Operating Procedures note that a conjugal relationship is one of some permanence, where the individuals are interdependent financially, socially, emotionally, and physically.

[19] This Court has adopted this definition of "common-law partner" for the purposes of the IRPR: *Deheza v Canada (Immigration, Refugees and Citizenship)*, 2016 FC 1262 at para 27 [*Deheza*]; *Cai v Canada (Citizenship and Immigration)*, 2007 FC 816 at para 12. Notably absent from this definition is the subjective belief of the spouses as to their status, which the Applicant submits is a defining factor militating in favour of his arguments.

[20] Here, the Decision indicates that the Officer considered the relevant factors and applied the correct test for common-law spouses. He assessed the relationship timeline and relied on a number of events to support his conclusion of the existence of a conjugal relationship, namely: the signing of a joint-tenancy lease, joint bank accounts, the "open advertising" of the

relationship, and the attending of social activities together. These events occurred prior to the Applicant indicating on his permanent residence application that he was single.

[21] Notwithstanding these facts, the Applicant argues that, owing to the couple's cultural backgrounds there was no "spousal relationship" as they "could only see themselves as boyfriend and girlfriend," for cultural and family reasons.

[22] However, the subjective belief of the spouses does not factor into the definition of a conjugal relationship as defined in *M. v H.*, incorporated in the Operating Procedures, and interpreted by this Court. The objective evidence available to the Officer supported his conclusion that "beyond probabilities" the Applicant and his spouse shared sleeping arrangements, social activities, and the like.

[23] It follows that this case is different from *Deheza*. In that case, the Officer found that two applicants were cohabiting. The Court concluded that this finding was made "without acknowledgment or consideration of the definition of 'common-law partner' in the Regulations, the Operational Manual, or the jurisprudence, and without any analysis of how the evidence met the relevant criteria." Here, the Officer analyzed the objective evidence offered and considered the appropriate factors set out in *M. v H.* and adopted by the Operational Procedures.

[24] As the Officer is presumed to have considered all of the information before him, this Court cannot reweigh the evidence (*Flores v Canada (Citizenship and Immigration)*, 2008 FC 723 at para 15).

[25] Overall, the Officer turned his attention to the evidence and applied the proper test. Therefore his decision is justifiable, transparent, and intelligible in the language of *Dunsmuir*, at para 47.

[26] The judicial review is therefore dismissed.

JUDGMENT in IMM-2079-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the Visa Officer's decision is dismissed.

2. No question is certified.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2079-17
STYLE OF CAUSE:	AMANDEEP v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 7, 2017
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	JANUARY 11, 2018

APPEARANCES:

Wennie Lee	FOR THE APPLICANT
Nicholas Dodokin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT