

Federal Court



Cour fédérale

Date: 20180628

Docket: IMM-5218-17

Citation: 2018 FC 671

[ENGLISH TRANSLATION]

Montréal, Quebec, June 28, 2018

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**LYUDMYLA SYZONENKO
YANA MELNYK**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for leave and for judicial review filed by a mother and daughter, Lyudmyla Syzonenko and Yana Melnyk, against a decision of the Migration Section of the Embassy of Canada to Ukraine (the Embassy) dated November 28, 2017 (the Decision) rejecting

the daughter's application to sponsor her mother under the parent class and declaring her inadmissible under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA).

II. Facts

[2] The story began when Yana Melnyk made a sponsorship application in support of applications for permanent residence for her parents, Ms. Syzonenko and Anatolii Melnyk, on February 4, 2011. Mr. Melnyk was refused two temporary resident visa applications in 2011 and 2014 and was declared inadmissible on security grounds under subsection 34(1) of the IRPA. Ms. Syzonenko (hereinafter the applicant) had no problem obtaining a super visa for Canada.

[3] The applicant filed an amended sponsorship application in April 2015 stating that she was single and separated—Mr. Melnyk had been removed from the file. The applicant and Mr. Melnyk had divorced on March 22, 2000, but reconciled and continued to live together as a family without remarrying up until fall 2013. The Embassy had at its disposal a notarized statement to this effect dated May 16, 2014.

[4] The first interview with the applicant was held at the Embassy on November 9, 2015 (first interview), followed by a field investigation by the Embassy's risk officers, during which testimonies and discussions with some of the applicant's acquaintances and family members were collected. A field investigation report was then prepared.

[5] In the meantime, the applicant had followed up with the Embassy several times to check the status of her application, including a request for access to information with the Canada Border Services Agency and Immigration, Refugees and Citizenship Canada dated March 3, 2017. The applicant even filed an application for a writ of mandamus before this Court dated April 20, 2017, arguing that six years had elapsed since the date she had filed her initial sponsorship application.

[6] On April 28, 2017, the applicant received a notice to appear at a second interview (second interview) and abandoned her mandamus application on May 1, 2017. In the meantime, she submitted several applications for disclosure to the Embassy, in light of the interview, without success.

[7] The second interview was held on July 20, 2017, and mainly revolved around the information collected during the field investigation. The applicant answered many questions in this regard. Following the second interview, the applicant filed an affidavit clarifying certain aspects of her story.

III. Decision

[8] On November 28, 2017, the sponsorship application was rejected and the applicant was declared inadmissible based on paragraph 40(1)(a) of the IRPA.

[9] The Embassy found that, on a balance of probabilities, the applicant and her ex-spouse were still in a spousal relationship and that she was therefore inadmissible under paragraph 40(1)(a) of the IRPA for having made a misrepresentation about an important fact.

[10] The Embassy based its finding primarily on the field investigation report.

IV. Issues

[11] The applicant stated that the Embassy had committed a breach of procedural fairness in its management of her sponsorship file; however, my decision will be based essentially on the second issue raised by the applicant, namely, the unreasonableness of the Embassy's Decision. For this reason, I am not addressing the issue of breach of procedural fairness.

V. Analysis

[12] I find that the Embassy's conclusion to the effect that, on a balance of probabilities, the spousal relationship between the applicant and her ex-spouse persisted, is unreasonable.

[13] The main reason for this finding is that the field investigation report on which the Embassy relied even states that the investigation is "inconclusive" as to whether the relationship persists between the applicant and Mr. Melnyk. In my opinion, there is no great certainty in the report with respect to the balance of probabilities.

[14] In the absence of any additional evidence, it is unreasonable to conclude that said relationship persists. In this case, most of the additional evidence stems from the applicant. I am not convinced that it had the effect of adding doubt about the applicant's marital status.

[15] I am also disturbed by the statement in the Decision whereby Mr. Melnyk, during the field investigation, allegedly refused to allow the officers to access his home to verify whether the applicant lived there. The field investigation report makes no mention of access to the home being refused, nor that the officers even asked if they could enter.

VI. Conclusion

[16] There are clearly several reasons to suspect that the applicant made misrepresentations concerning her relationship with her ex-spouse, but the suspicions are insufficient to support the Embassy's decision.

[17] The application for leave and judicial review is allowed, and the case is referred back to a different officer for redetermination.

JUDGMENT in IMM-5218-17

THIS COURT'S JUDGMENT is that:

1. The application for leave and judicial review is allowed;
2. The case is referred back to the Migration Section of the Embassy of Canada to Ukraine for redetermination by another officer;
3. There is no serious question of general importance to be certified;
4. The style of cause has been modified to correctly reflect the respondent as The Minister of Citizenship and Immigration.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5218-17

STYLE OF CAUSE: LYUDMYLA SYZONENKO, YANA MELNYK v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 21, 2018

JUDGMENT AND REASONS: LOCKE J.

DATED: JUNE 28, 2018

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