

Federal Court



Cour fédérale

Date: 20231127

Docket: IMM-10782-22

Citation: 2023 FC 1565

Toronto, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**MUHAMMAD MAUKTASID REHMAN
CHEEMA**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of an immigration officer [Officer] of Immigration, Refugee, and Citizenship Canada [IRCC], dated October 14, 2022 [the Decision], in which the Officer refused the Applicant's application for permanent residence as the spouse of his sponsor. The Officer was not satisfied that the marriage between the Applicant

and his sponsor was genuine or that it was not entered into primarily for the purpose of acquiring permanent residence in Canada.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Pakistan. Prior to living in Canada, he lived in South Africa from 2004 until 2019, where he married his first wife, and the couple had a son. The Applicant's son still lives in South Africa. The Applicant divorced from his first wife in October of 2019. He moved from South Africa to the United States in January of 2019, and he arrived in Canada in June of 2019.

[4] The Applicant now lives with his second wife, who is a Canadian citizen by birth. The Applicant claims to have met his wife at a bus stop on his way to a party in Scarborough in July 2019. They began living together in March of 2021 and were married in April 2022. The Applicant sought permanent resident status under the Spouse or Common-Law Partner in Canada Class, with his wife as sponsor [Sponsor].

[5] As a part of the application process, the couple attended an IRCC office for an interview to assess the *bona fides* of their marriage and determine whether they met the requirements of s. 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and s. 124(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Applicant and his

Sponsor were interviewed individually, and IRCC followed up with phone calls. Subsequently, in the Decision that is the subject of this application for judicial review, the Officer denied the Applicant's application for permanent residence and the Sponsor's sponsorship application.

III. Decision under Review

[6] The refusal letter sent to the Applicant stated:

Based on the assessment of your information, including your application, the supporting documentation, and the information you provided during the interview(s). I brought my concerns to the attention of the primary applicant and sponsor. I was not disabused of my primary concerns. Due to the nature of my primary concerns I am not satisfied that your marriage to your sponsor is genuine or that it was not entered into primarily for the purpose of acquiring permanent residence in Canada. Therefore, as per the Regulations, you are not considered to be a member of the family class.

[7] In the Officer's Global Case Management System notes, which provide reasons for the Decision, the Officer noted several inconsistencies and concerns:

- A. The Sponsor could not provide a residential lease with the Applicant's name on it (although the Officer accepted the Sponsor's explanation that, in order to avoid a rent increase based on his income, she did not advise her housing organization that the Applicant had moved in with her);
- B. There were inconsistencies surrounding the couple's cell phone payment arrangements;
- C. There were inconsistencies in the Applicant's answers as to how long it takes to walk to a local store from their home;

- D. The Applicant stated he quit smoking in early 2021, but the Sponsor was unaware that he had ever smoked;
- E. There were inconsistencies as to which which streaming services they used at home to watch TV shows and movies; and
- F. The Officer had concerns about the legitimacy of their Facebook page and associated friends' accounts, as well as inconsistent explanations as to why the Facebook account was created.

[8] As a result of these inconsistencies and concerns, the Officer was not satisfied that the Applicant and the Sponsor were in a genuine marriage and not one entered into for the purposes of immigration.

IV. Issues and Standard of Review

[9] Based on a review of the parties' submissions, the substantive issue raised for the Court's determination is whether the Decision is reasonable. As suggested by that articulation of the issue, the parties agree (and I concur) that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[10] Also, on November 9, 2023, the Applicant's solicitor filed a motion in writing under Rules 125(1) and 369 of the *Federal Courts Rules*, SOR/98-106, seeking to be removed as solicitor of record on the basis that, commencing in March 2023, he has been unable to contact

the Applicant. The Respondent does not oppose this motion. My Judgment in this application will also address the removal motion.

V. Analysis

Merits of the Application

[11] At the hearing of this application for judicial review, because of the pending motion for removal as solicitor of record, the Applicant's solicitor sent agent counsel to appear in his stead. On the merits of the application, agent counsel relied on the Applicant's Memorandum of Argument by way of principal submissions, the Respondent made brief oral submissions, and agent counsel made brief submissions in reply.

[12] In relation to the Applicant's housing, he submits that the Officer unreasonably drew an adverse inference against the genuineness of his marriage based on the Sponsor's failure to adhere to her housing bylaws by notifying the housing co-op that the Applicant was residing with her. He notes that the Officer accepted the Sponsor's explanation that she did not notify the co-op because she did not want her rent to increase. The Applicant argues that it was unreasonable for the Officer to accept that explanation but still maintain a concern related to the housing issue.

[13] I agree with the Respondent that the Applicant's argument is based on a misunderstanding of the Officer's reasoning. The Officer did not draw a negative inference based on this evidence. Rather, the remaining concern that the Officer expressed was that, in the

absence of the Applicant having been added to the Sponsor's lease, there was insufficient evidence demonstrating that he resided with the Sponsor.

[14] Next, the Applicant submits that the Officer erred in identifying an inconsistency related to the cell phone plans of the Applicant and the Sponsor where no such inconsistency existed. The Applicant argues that the Officer's analysis is irrational, as the particular financial arrangements that the couple adopted for paying their various cell phone bills does not suggest any invalidity in their relationship.

[15] Again, I agree with the Respondent that the Applicant's argument misunderstands the Officer's analysis. The inconsistency the Officer identified was between the testimony and the documentary evidence submitted. The oral evidence was that the Applicant paid the Sponsor's phone bill with Chatr, but there were no records of Chatr transactions in the Applicant's bank accounts consistent with this testimony.

[16] In relation to the couple's Facebook page, which the Applicant admits was fake, he submits that he was forthright about the fact that the Facebook profile was created for purposes of his permanent residence application, because he believed based on his counsel's advice that this was a requirement of the sponsorship program. He argues that there was no inconsistency in the Facebook evidence that would support a conclusion that the relationship is not genuine.

[17] I have no difficulty concluding that this portion of the Officer's analysis was reasonable. In addition to the concerns that would obviously arise from the creation of a fake couple's profile on Facebook for purposes of supporting an immigration application, the Applicant gave

inconsistent evidence as to the reason the profile was created. He first attempted to support the legitimacy of the profile and only later explained that the profile was created on the advice of his counsel.

[18] Next, the Applicant argues that the Officer erred in relying on the inconsistency between the Applicant's evidence as to how long it took to walk home from a nearby drugstore and the evidence of the length of that walk based on Google Maps. The Applicant reported a 15 to 20 minute trip, when it was actually a 7 minute trip. He submits that the fact that his evidence was two or three times that of Google Maps does not translate into a significant inconsistency, given that the number of minutes involved is small. The Applicant also argues that this discrepancy is not relevant to the genuineness of the relationship.

[19] I accept the submission that this inconsistency is not as significant as others upon which the Officer relies. However, it was open to the Officer to rely on this inconsistency, particularly when combined with the other inconsistencies identified in the Decision. I also have no difficulty understanding the Officer's reasoning, i.e. that the Applicant's inability to accurately identify the distance to the local drugstore raises concern that he does not actually live with the Sponsor.

[20] The Applicant submits that the Officer drew unreasonable conclusions about the genuineness of the relationship based on the evidence surrounding his smoking and his failure to identify Netflix as the couple's streaming service of choice. The Applicant testified that he was a smoker when the couple first started dating, but the Sponsor denied any knowledge of that. The Applicant testified that he hid his smoking habit from her. The Officer did not accept this explanation, reasoning that it would not be possible to hide from the Sponsor the smells and

physical signs that would have resulted from his smoking. The Applicant submits that the fact that the couple has secrets does not mean that the relationship is not genuine.

[21] I do not read the Officer's analysis as based on the fact that there were secrets. Rather, the Officer was concerned about the couple's inconsistent evidence and did not consider the Applicant's explanation, that he kept his smoking secret from his wife, to be a reasonable one. The Applicant argues that the Officer did not rely on any evidence to support this analysis. To the extent the Applicant is suggesting that the Officer required some sort of expert evidence to the effect that smoking leaves a smell on one's body and clothing, I find that argument without merit.

[22] With respect to the streaming services, the Applicant submits that the Officer's reasons are ignorant of heteronormative cultural expectations embedded in the conclusion about the Applicant's failure to identify the correct streaming service. The Applicant has provided little expansion upon this submission, and I do not find it compelling. The Officer found it hard to believe that the Applicant had not recognized that they use Netflix as their principal streaming service, as the name and logo is visible everywhere on the website and app. The Applicant has not convinced me that there is any cultural insensitivity embedded in that analysis.

[23] Finally, the Applicant argues that the Officer did not provide adequate reasons to support a conclusion that the marriage is not genuine. He submits that the Officer was obliged to consider the totality of the evidence, including weighing any positive factors indicative of a genuine marriage.

[24] Other than citing jurisprudence identifying the nature of the balance of probabilities standard of proof in civil matters, the Applicant has not advanced any authorities in support of his position. Nor has he pointed to any particular evidence that he argues the Officer overlooked. I find that the Decision intelligibly explains the Officer's concerns, which resulted in the Officer not being satisfied that this matter involved a genuine marriage and not one entered into for the purposes of immigration.

[25] Having considered the Applicant's arguments and finding that they do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

Motion for Removal of Solicitor of Record

[26] At the hearing of this application, I advised the parties that, while my decision on the merits of the application was reserved, I was prepared to grant the motion for removal of the solicitor of record and that my Judgment would so provide. The Applicant's solicitor's motion materials establish that there has been a breakdown of communication with the Applicant and therefore a breakdown of the solicitor-client relationship, such that the solicitor's removal from the record is warranted.

[27] Agent counsel advised that my Judgment could reflect their office's address, which was provided to the Court at the hearing, for purposes of service of this decision upon the Applicant. Those details are captured in my Judgment.

JUDGMENT IN IMM-10782-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified for appeal.
3. The Applicant's solicitor's motion dated November 9, 2023, is granted and the Applicant's solicitor is removed from the record in this matter.
4. For purposes of service upon the Applicant, this Judgment shall be sent to 150 Carleton St., Suite 100, Toronto, ON, M5A 2K1.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10782-22

STYLE OF CAUSE: MUHAMMAD MAUKTASID REHMAN CHEEMA v
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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 23, 2023

JUDGMENT AND REASONS: SOUTHCOTT J.

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