

Federal Court



Cour fédérale

Date: 20250417

Docket: IMM-5554-24

Citation: 2025 FC 711

Ottawa, Ontario, April 17, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MARIA NURY GALLEG0 ATEH0RTUA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant applied for permanent residence as a common-law partner of a Canadian citizen (“Sponsorship Application”). An officer at Immigration, Refugees and Citizenship Canada (“the Officer”) refused the application. The Officer found that the Applicant and her sponsor, Mr. Melo, had not provided sufficient evidence that they cohabited in a conjugal relationship for a period of at least a year. Genuineness of the relationship was not at issue. The

Officer's evaluation of the evidence on cohabitation is the sole issue on judicial review. The parties agree, as do I, that I have to review the Officer's decision on a reasonableness standard.

[2] The *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] define a "common-law partner" 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." The parties accept that this is a relevant requirement and the key point at issue is whether the parties lived together for one year, at minimum, prior to filing the Sponsorship Application.

[3] As noted by the Respondent, the relevant guidelines and the document checklist suggest certain types of documents may be submitted to demonstrate cohabitation, like joint bank accounts, bills at the same address, mortgage or lease documents. However, as both the guidelines and the document checklist indicate, this list of documents is certainly not exhaustive. In fact, the document checklist contemplates applicants in some circumstances not being able to produce these types of documents and asks them to explain why they are not available.

[4] The Applicant and Mr. Melo explained that they had cohabited together with Mr. Melo's mother, who is elderly, in her home since the Applicant came to Canada approximately two years prior to filing the Sponsorship Application. They also provided evidence that the Applicant cancelled her return ticket home, and that they both travelled together to the Applicant's home country and lived together during that period of time as well. The Applicant provided affidavits and letters of support that addressed the length of the cohabitation period.

[5] The Officer sent a Procedural Fairness Letter explaining that they were not satisfied that sufficient evidence had been provided concerning the length of the cohabitation period. The Applicant responded and provided further documents, including a letter from Mr. Melo's mother confirming the period of cohabitation and that the couple lived together with her.

[6] The Officer notes that some evidence post-date and that others pre-date the relevant period of cohabitation. There is, however, no assessment of the evidence, such as the affidavits and the letter of Mr. Melo's mother, that speak to the couple living together for approximately two years prior to the filing of the Sponsorship Application.

[7] The Respondent argues that it was clear from the Procedural Fairness Letter that the Officer was not satisfied with the type of evidence the Applicant and her sponsor had provided and required something more, giving examples of the types of documents that may be able to confirm cohabitation.

[8] The problem with this submission is that the Officer's reasons do not evaluate the affidavits and letters of support that speak to the couple's cohabitation period and the reason that they could not provide mortgage/lease documents, or utility bills. Nowhere in the reasons does the Officer explain why the evidence provided to support cohabitation was insufficient. This was key evidence that went to the only reason the application was refused. The failure to evaluate evidence on a core issue renders the decision unreasonable (*Canada (Minister of Citizenship and Immigration), v Vavilov*, 2019 SCC 65 at paras 126, 128).

JUDGMENT in IMM-5554-24

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is allowed;
2. the decision dated March 13, 2024 is quashed and the matter is sent back to be redetermined by a different decision-maker; and
3. no serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5554-24

STYLE OF CAUSE: MARIA NURY GALLEGO ATEHORTUA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2025

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: APRIL 17, 2025

APPEARANCES:

Hadayt Nazami	FOR THE APPLICANT
Aleksandra Murray	FOR THE RESPONDENT

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