

Case Name:

Kornas v. Canada (Minister of Citizenship and Immigration)

**Between
Michael Kornas, Applicant, and
The Minister of Citizenship and Immigration, Respondent**

[2010] F.C.J. No. 621

[2010] A.C.F. no 621

2010 FC 517

Docket IMM-920-09

Federal Court
Toronto, Ontario

O'Reilly J.

Heard: February 3, 2010.

Judgment: May 13, 2010.

(15 paras.)

Immigration law -- Immigrants -- Sponsorship applications -- Sponsor issues -- Application by Kornas for judicial review of dismissal of sponsorship application by his wife dismissed -- Wife unable to show she was actually cohabiting with Kornas, Polish citizen, in condo they purchased together -- Officer entitled to rely on fact wife still listed former residence on important documents including driver's license, and on wife's apparent lack of knowledge there was phone at condo -- Immigration and Refugee Protection Regulations, s. 124.

Application by Kornas for judicial review of a decision dismissing his wife's application to sponsor him to Canada. Kornas was a Polish citizen who came to Canada in 2003 after separating from his wife. He met Khan, a Canadian, who was widowed. Kornas divorced his wife and married Khan in 2008. Khan wished to sponsor Kornas to Canada. Khan told the immigration officer at her interview that she and Kornas purchased a condo together in 2007, but that she did not move in until they were married. She also admitted she stayed at her previous residence with her son when Kornas worked late, but claimed she stayed with Kornas most of the time. The officer called Khan twice at the condo, but no one answered. Kahn claimed she was at medical appointments when the officer

called, but could not confirm this with evidence from the hospital. The officer noted Khan continued to identify her previous residence as her address on her driver's license, cell phone bill and mortgage documents. The officer concluded Khan and Kornas had not met the co-habitation requirement for sponsorship.

HELD: Application dismissed. Although there was some evidence supporting the assertion that the couple lived together, there was contrary evidence that was sufficient to support the officer's decision. The officer was entitled to rely on the fact Khan continued to identify her former residence as being her current address on important documents. The issue with the telephone calls at best showed Khan was unaware there was a telephone at the condo where she said she lived most of the time.

Statutes, Regulations and Rules Cited:

Immigration and Refugee Protection Regulations, SOR/2002-227, s. 124

Counsel:

Raj Napal, for the Applicant.

David Cranton, for the Respondent.

REASONS FOR JUDGMENT AND JUDGMENT

O'REILLY J.:--

I. Overview

1 Mr. Michael Kornas is a citizen of Poland who arrived in Canada in 2003. He was legally separated from his wife, who remained in Poland with their two children. In Canada, Mr. Kornas met and began a relationship with Ms. Marilyn Khan, who was widowed after her husband was killed in a car accident. Ultimately, Mr. Kornas divorced his wife and, in 2008, married Ms. Khan. Ms. Khan wished to sponsor Mr. Kornas in his application to become a permanent resident in Canada. However, in 2009, an immigration officer found that the couple had not shown that they were actually cohabiting, a requirement under s. 124 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (see Annex).

2 Mr. Kornas argues that the officer erred by failing to consider evidence that was relevant to the question of whether they were cohabiting, and by emphasizing evidence that was not relevant. I find that Mr. Kornas' disagreement with the officer is really about the relative weight to be given to the evidence, a matter purely within the officer's discretion. Accordingly, I must dismiss this application for judicial review.

II. Analysis

(1) The Officer's Decision

3 The officer interviewed both Mr. Kornas and Ms. Khan. She also considered the documentary evidence supplied by the couple. She noted that the couple had purchased a condominium together in 2007, but that Ms. Khan stated she did not move in with Mr. Kornas until 2008, after their marriage. Further, Ms. Khan stated that she continues to stay with her son at her previous residence (which she still owns) when Mr. Kornas is working late. During the interview, she stated that her son "lives with me" at that home, but that she lives with Mr. Kornas "most of the time".

4 The officer called Ms. Khan twice at the home telephone number she had provided. No one answered. When the officer asked Ms. Khan about this, she explained that she was at the hospital for tests. The officer tried to verify this explanation, but hospital staff could not confirm Ms. Khan's attendance on the dates in question. Nor could Ms. Khan provide written confirmation of her appointments.

5 The officer also noted that Ms. Khan continued to identify her previous residence as being her current address on her driver's license, her cell phone bill, and on the mortgage documents for the condominium she bought with Mr. Kornas.

6 Based on this evidence, the officer concluded that she was not satisfied that the couple lived together.

(2) Preliminary Issue - Ms. Khan's Allegedly False Affidavit

7 In an affidavit dated April 24, 2009, Ms. Khan stated there was no phone connected at the condominium she shared with Mr. Kornas. Rather, they both used cell phones. However, amongst the documentary evidence before the officer was a bill for a phone at the condominium. Ms. Khan submitted a supplementary affidavit in which she explains that the phone was part of a package of services arranged with a cable company, and that it was rarely used. Nevertheless, the invoices showed a number a long distance charges arising from the use of that phone.

8 The Minister argues that this application for judicial review can be dismissed on the ground that it is based, at least in part, on a false affidavit. In my view, it is unnecessary to deal with this question as the application for judicial review should be dismissed in any case. I will assume, therefore, for present purposes, that Ms. Khan made an innocent error and attempted in good faith to correct it.

(3) Alleged Errors by the Officer

9 Mr. Kornas argues that the officer failed to consider the bulk of the evidence indicating that he and Ms. Khan lived together. Their evidence included:

- * joint credit cards;
- * joint ownership of the condominium;
- * joint responsibility for the expenses relating to the condominium;
- * joint purchases to furnish the condominium;
- * documents showing that Mr. Kornas and Ms. Khan shared the same address at the condominium; and

* evidence that Mr. Kornas' children had stayed at the condominium during a visit to Canada.

10 On the other hand, Mr. Kornas submits that the officer gave undue emphasis to the evidence that:

* Ms. Khan did not answer the phone number she had provided and failed to explain her absences adequately;

* Ms. Khan continued to identify her former residence as her current address on a number of documents.

(4) Was the Officer's Decision Unreasonable?

11 I cannot conclude that the officer's decision was unreasonable. There was evidence supporting the couple's claim that they lived together, but there was also contrary evidence.

12 I appreciate Mr. Kornas' concern about the officer's phone calls. The officer was calling Ms. Khan's former residence, not the condominium. Therefore, taken alone, the fact that Ms. Khan was not present to answer the calls might have supported the argument that she lived at the condominium, not at her former home. On the other hand, Ms. Khan confirmed in correspondence with the officer that she continues to rely on the home phone at her former residence and collects messages there. Further, the officer asked for evidence of her medical appointments on the days when Ms. Khan said she was at the hospital, but Ms. Khan was unable to provide it. Therefore, her explanation for not answering the phone could not be verified. In addition, the most benign interpretation of Ms. Khan's conflicting affidavits suggests she had been unaware that there was a telephone at the condominium, which does not strengthen Mr. Kornas' claim that they lived together there.

13 Finally, the officer was entitled to rely on the fact that Ms. Khan continued to identify her former residence as being her current address on a number of documents. She changed the address on her driver's licence, but only after the officer interviewed her and raised a concern about it. I see no error in the officer's treatment of this evidence.

14 On the whole, therefore, I cannot find that the officer's decision was unreasonable. It fell within the range of acceptable outcomes, based on the facts and the law.

III. Conclusion and Disposition

15 The officer's conclusion that Mr. Kornas and Ms. Khan were not cohabiting was based on the evidence before her, at least some of which was conflicting. Therefore, I cannot find that it was unreasonable. It represented an acceptable outcome based on the facts and the applicable law. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

O'REILLY J.

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Annex "A"

Immigration and Refugee Protection Regulations, SOR/2002-227

124. A foreign national is a member of the spouse or common-law partner in Canada class if they

- (a) are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;
- (b) have temporary resident status in Canada; and
- (c) are the subject of a sponsorship application.

* * *

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

124. Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :

- a) il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;
- b) il détient le statut de résident temporaire au Canada;
- c) une demande de parrainage a été déposée à son égard.