

Federal Court



Cour fédérale

Date: 20150330

Docket: IMM-4748-14

Citation: 2015 FC 399

Ottawa, Ontario, March 30, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

INPANATHAN THIRUMANAY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant challenges the legality of a decision by the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD], dated May 22, 2014, dismissing his appeal from the decision of a visa officer refusing to grant his wife, Marinathevaki Inpanathan, a permanent resident visa in the spousal sponsorship category.

[2] The applicant was born in Sri Lanka and became a Canadian citizen in 1990. He depends on welfare because he lost his ten fingers to frostbite in 1994. Since 1990, he has been seeing a psychiatrist for depression and was also later diagnosed with schizophrenia. On July 7, 2009, the applicant married his wife, a Sri Lankan national, and an application for sponsorship was made in 2010. The applicant's wife had a first interview on March 2, 2011 and at that time, the visa officer was satisfied that it was a genuine marriage despite the applicant's working disability because of the loss of his fingers. It does not appear that the issue of the applicant's mental situation was drawn to the attention of the officer who, upon discovering that issue, started to have concerns. Following a second interview, the same visa officer refused the application on June 20, 2011. He came to the conclusion that the marriage was not genuine. The extent of the applicant's wife's knowledge of the applicant's mental illness and the nature of same became a major consideration for doubting of the genuineness of the marriage.

[3] On appeal, the IAD concluded that the applicant was sincere; on his part, he had entered the marriage in good faith. However, the IAD found that the applicant's wife had entered into the marriage for the purpose of acquiring a status in Canada. Therefore, the marriage was not genuine. The IAD noted that the applicant's wife was not aware of how the applicant had lost his fingers and was completely unaware of the extent of the applicant's mental illnesses. The IAD noted some contradictions between what the applicant said he had told his wife, and what his wife actually knew, as well as contradictions in the testimony of the wife. In addition, the IAD concluded that the lack of knowledge and lack of interest about the mental illnesses of the applicant on the part of the wife was not indicative of a good faith relationship. The IAD also noted inherent incompatibilities, including the handicap and mental condition of the applicant,

the twenty-year age difference and the fact that the applicant and his wife were of different religions. The IAD concluded that the applicant had not demonstrated on a balance of probabilities that his marriage was genuine and dismissed the appeal.

[4] The only point of issue in this case is whether the IAD's decision is reasonable.

[5] In a nutshell, the applicant argues that the IAD acted unreasonably in questioning the extent of his wife's knowledge of his mental illnesses and in concluding that she had expressed a lack of interest in such a significant aspect of the applicant's health. The applicant submits that the visa officer's earlier finding was based on the fact that the applicant appears to continue to suffer from schizophrenia. The IAD didn't consider the fact that the applicant was asymptomatic at the time of the marriage and hearing of the appeal. The IAD ignored highly relevant medical evidence in this regard from Dr Jacques Bernier, psychiatrist (letter dated March 27, 2014). Also, the IAD made a factual error by stating that the applicant's wife only mentioned sleeping problems at the interview with the visa officer because she also mentioned that he was thinking a lot and taking a pill for that. The applicant states that his wife's testimony was not contradictory: she knew about his mental health problem and she accepted him as he was. The applicant also argues that the fact that his wife did not know how he had lost his fingers was irrelevant. The IAD also completely ignored the documentary evidence supporting the good faith of the marriage, including testimonials from family members and proof of financial support. Consequently, the IAD's decision is unreasonable.

[6] According to the respondent, the decision is reasonable. The IAD is presumed to have considered the psychiatrist's letter. Moreover, this evidence is not determinative. Whether the applicant is asymptomatic or not is simply not relevant here. The applicant was diagnosed with a severe mental condition. He is also physically handicapped. He does not work and is on welfare. There is a twenty-year age difference between the spouses. Thus, it was reasonable for the IAD to find that the applicant's wife should have known more about or at least shown more interest in the applicant's illnesses, loss of his fingers and siblings. The weight to assign to those factors was for the IAD to decide. Even if another IAD member may have assessed the evidence differently, this is not enough to justify an intervention by the Court.

[7] The present application must fail despite the able presentation made by the applicant's learned counsel. The whole appeal revolves on the particular facts of the case and their interpretation by the IAD. There is no patent error of fact. This is not a case where, cumulatively, questionable findings of fact made by the tribunal, render its final conclusion unreasonable. At the oral hearing before me, applicant's counsel referred to the answers provided by the applicant's wife both before the visa officer and the IAD. She proposed a different interpretation of the very same answers. However, it is not the role of this Court to reassess the evidence and substitute its opinion to the IAD. The conclusion that the marriage was not genuine was clearly open, based on the evidence on record, including the wife's lack of knowledge and lack of interest in the applicant's mental illnesses and the loss of his fingers, as well as the various contradictions in her testimony. In addition, the applicant himself concedes that "his wife had not had a chance to [...] get to know him and ask him questions." Compatibility is very important in arranged marriages. It was open for the IAD to conclude that the applicant's wife "was unable to

explain why, despite inherent incompatibilities, she was nevertheless genuinely committed to a marriage with the [applicant], other than to acquire a status in Canada". Consequently, the IAD's decision was reasonable.

[8] The application shall be dismissed. Counsel have proposed no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4748-14

STYLE OF CAUSE: INPANATHAN THIRUMANAY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 12, 2015

JUDGMENT AND REASONS: MARTINEAU J.

DATED: MARCH 30, 2015

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