

Federal Court



Cour fédérale

Date: 20160711

Docket: IMM-2317-15

Citation: 2016 FC 762

St. John's, Newfoundland and Labrador, July 11, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

LANCE DONALD HAYTER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT

[1] These Reasons are issued pursuant to the Judgment issued on June 10, 2016.

[2] Mr. Lance Donald Hayter (the “Applicant”) seeks judicial review of a decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”), dated April 28, 2015. In that decision, the IAD dismissed the Applicant’s appeal from the decision of an Immigration Officer (the “Officer”) refusing the sponsored application for permanent residence

of his spouse. The Officer concluded that the marriage between the Applicant and his spouse, Qing Li, was not genuine within the meaning of subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) and was entered into for the purpose of acquiring status under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[3] The Applicant is a Canadian citizen. His wife is a citizen of China.

[4] In his evidence before the IAD, the Applicant testified that he met his wife through a mutual friend in August 2011 and began a telephone and internet relationship in October 2011. He first travelled to China to meet his wife in September 2012 and they married ten days later.

[5] The Applicant submitted a spousal sponsorship application on October 10, 2013.

[6] In October 2014, the Applicant travelled again to China to visit his wife.

[7] By letter dated April 7, 2014, the application for permanent residence of the Applicant’s wife was refused on the basis that, pursuant to subsection 4(1) of the Regulations, the Applicant’s wife was not a spouse because the marriage was not genuine and was entered into for the purpose of acquiring status or privilege under the Act.

[8] The hearing before the IAD was held on April 28, 2015. In its decision, the IAD concluded that, while there was significant evidence of the genuineness of the marriage, it was entered into primarily for the purpose of acquiring status in Canada.

[9] The IAD found that the Applicant's wife's immigration history showed a desire to reside in Canada "by hook or by crook". Her history included a failure to leave Canada in 2001 upon the expiry of a visitor's visa. The wife had come to Canada to visit her daughter who was then studying at a Canadian university. The history also included an earlier sponsored permanent residence application that had been made and then withdrawn by another sponsor.

[10] The IAD found the Applicant's wife's testimony about a subsequent breach in relationship with her daughter lacked credibility. It also noted several inconsistencies in the evidence of both the Applicant and his wife about the development of their relationship.

[11] The IAD said that there was significant evidence of the genuineness of the marriage; however, that evidence could not overcome the evidence that the Applicant's wife entered into the marriage for the primary purpose of acquiring status in Canada.

[12] The Applicant submits that the Board failed to consider the genuineness of the marriage when it determined his wife's purpose for entering into the marriage. He contends that there is a presumption that if the marriage is genuine it would weigh significantly in favour of finding that the marriage was not entered into for the purpose of obtaining status; see the decisions in *Sharma*

v. Canada (Minister of Citizenship and Immigration), 2009 FC 1131 and *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 417.

[13] The Applicant argues that the IAD failed to consider the degree of mutual commitment and support between the spouses and their expressed intentions before the marriage.

[14] The Applicant argues that the Board misinterpreted his wife's statement that she was looking for "a Canada man". The record clearly shows that "Canada man", "Canada boyfriend" and "little Asian flower" are pet names and are not indicative of her true motives for entering into the marriage.

[15] Finally, the Applicant submits that the IAD ignored contrary evidence, specifically the five year gap between his wife's last trip to Canada and the presentation of this application for permanent residence.

[16] The Minister of Citizenship and Immigration (the "Respondent") submits that the IAD's decision was reasonable in light of the Applicant's wife's immigration history and the inconsistencies in the testimony regarding their relationship.

[17] The Respondent also argues the IAD properly considered the issues of whether the Applicant's marriage was genuine and whether it was entered into for the purpose of gaining status as separate issues as required by subsection 4(1) of the Regulations.

[18] The finding that the wife is not a spouse, because she is not a member of the family class, is a question of mixed fact and law, and reviewable on the standard of reasonableness; see the decision in *Khosa v. Canada (Minister of Citizenship and Immigration)*, 1 S.C.R. 339 at paras. 52-62.

[19] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at para. 47, the standard of reasonableness requires that the reasons enable the reviewing Court to understand why the tribunal made its decision, and permit it to determine if the conclusion is within the range of possible, acceptable outcomes.

[20] In my opinion, the decision does not meet the standard of reasonableness as discussed above. The finding of the IAD, that the marriage was entered into primarily for the purpose of acquiring a status or privilege under the Act, is not reasonable in light of the evidence about the Applicant's relationship with his wife before they married. This evidence includes the hundreds of emails between the Applicant and his wife, and the records of frequent communication via Skype.

[21] As well, I find that the IAD unreasonably concluded that the use of the pet names by the Applicant and his wife in their emails, for example "Canada Man", meant that the wife was seeking to acquire status in Canada.

[22] The IAD also failed to explain why the evidence of the genuineness of the relationship, which predated the Applicant's marriage, did not establish that the marriage was not entered into primarily for the purpose of acquiring status in Canada.

[23] In the result, this application for judicial review is allowed and the matter is remitted to a differently constituted panel for re-determination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2317-15

STYLE OF CAUSE: LANCE DONALD HAYTER V. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 17, 2015

REASONS FOR JUDGMENT HENEGHAN J.

DATED: JULY 11, 2016

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