

Federal Court



Cour fédérale

Date: 20160225

Docket: IMM-2943-15

Citation: 2016 FC 249

Toronto, Ontario, February 25, 2016

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

RAMANAND PITAMBER

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

UPON application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Immigration Appeal Division [IAD], dated May 28, 2015, rejecting the Applicant's appeal of an immigration officer's refusal to issue a permanent resident visa to his wife, Ms. Yoagwattie Bridgmohan [Angela], on the basis that their marriage is not genuine and was entered into primarily for the purpose of acquiring status or privilege under IRPA;

AND UPON considering that this application raises the issue of whether the IAD erred in concluding that the Applicant's marriage to Angela was a bad faith marriage pursuant to Regulation 4 of the *Immigration and Refugee Protection Regulations*, SOR, 2002-227 [Regulations];

AND UPON considering that the determination of a bad faith marriage is a question of mixed fact and law, reviewable on a standard of review of reasonableness, whereby a reviewing court must examine whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect to the facts and law and whether the decision-making process is intelligible, justified and transparent (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190) [*Dunsmuir*];

AND UPON considering that the IAD has expertise in this matter and as such, is owed deference (*MacDonald v Canada (Citizenship and Immigration)*, 2012 FC 978 at para 16);

AND UPON considering the Certified Tribunal Record and the oral and written representations of the parties, this Court is of the view that the application for judicial review should be dismissed for the following reasons:

[1] Originally from Guyana, the Applicant became a permanent resident of Canada in May 1982 and is now a citizen of Canada. The Applicant has a son in Canada from a first marriage which lasted three (3) years and which ended in separation in 2000.

[2] The Applicant and Angela, a citizen of Guyana, first spoke to each other in August 2007, after the Applicant was shown a photo of Angela by her uncle. In April 2008, the Applicant travelled to Guyana, where he met Angela for the first time at the airport, and married her five days later. From April 2008 onwards, the Applicant and Angela spoke on the telephone on a daily basis and the Applicant made frequent trips back to Guyana to see her.

[3] In 2008, Angela applied for a permanent resident visa and the Applicant applied to sponsor her. However in March 2009, an immigration officer rejected the sponsorship application on the basis that he was not satisfied that their relationship was genuine and that Angela intended to live with the Applicant permanently in Canada. Initially, the Applicant instituted an appeal of the immigration officer's decision, but he withdrew it once he was informed that his marriage to Angela was not considered valid given that he had not divorced his previous wife.

[4] In October 2010, Angela gave birth to the Applicant's son, who is now a Canadian citizen.

[5] In May 2011, the Applicant obtained a divorce from his previous wife, following which the Applicant and Angela annulled their marriage and re-married in August 2011.

[6] In September 2011, the Applicant filed a new application to sponsor Angela, which was rejected by an immigration officer on October 11, 2012, on the basis that: 1) the marriage is not genuine and that it was entered into primarily for the purpose of acquiring status or privilege

under IRPA; and, 2) the Applicant's wife is inadmissible for serious criminality pursuant to paragraph 36(1)(c) of IRPA due to her attempt in November 2005 to use a fraudulent passport to enter the United States.

[7] On May 28, 2015, the IAD rejected the Applicant's appeal of the immigration officer's finding of a bad faith marriage on the grounds that the Applicant had not proven on a balance of probabilities that the marriage is genuine and was not entered into primarily for the purpose of acquiring status or privilege under IRPA.

[8] The Applicant alleges that the IAD committed two (2) reviewable errors: 1) the IAD applied the wrong legal test in considering Regulation 4 when it stated that the marriage was entered into for the purpose of "gaining an advantage in immigrating to Canada"; and, 2) the IAD ignored relevant evidence and made findings which were unsupported by the evidence before it. The Respondent submits that the IAD committed no reviewable error in its decision.

[9] With respect to the first issue, I find that the IAD correctly enunciated the test for determining a bad faith marriage namely, that it must be both genuine and not entered into primarily for the purpose of acquiring any status or privilege under IRPA. This is apparent from paragraphs 3, 15, 16, 23, 41 and 42 of the IAD's decision.

[10] On the second issue raised by the Applicant, the IAD found that the Applicant's marriage to Angela was not genuine and was entered into primarily for the purpose of acquiring status and privilege under IRPA. In its determination of whether the marriage was genuine, the IAD

considered a number of positive factors, including their child together, the role played by the Applicant in raising the child when he travels to Guyana, the support he brings to his wife and son, his frequent travels to Guyana, the communications between the Applicant and his wife and the designation of the Applicant's wife and son as his insurance beneficiaries. The IAD highlighted that in particular, the birth of a child was a significantly strong indicator that at the present time the marriage could be genuine.

[11] However, the IAD found that other negative factors outweighed the aforementioned positive factors, namely: 1) Angela's lack of knowledge regarding the Applicant's life in Canada, and in particular, his job history, his relationship with his son from a previous marriage and the duration of his past marriage; 2) the Applicant's lack of knowledge of Angela's previous migration attempt to the United States using a false Canadian passport; 3) the Applicant's inability to remember when their first contact took place and when they were married; and 4) Angela's confusion regarding the date of their second marriage.

[12] In particular, the IAD found that the divergence in testimony regarding the Applicant's contact with his son from his previous marriage was a significant negative factor in its genuineness analysis.

[13] The IAD noted that Angela had a low level of education which resulted in her testifying poorly and that it would not make a negative inference as to her credibility as a result. The IAD found nonetheless that her inability to describe in any intelligible manner the circumstances surrounding her unsuccessful attempt to enter the US illegally in 2005, and in particular, whether

she had walked to Puerto Rico or arrived by boat or by plane, indicated that she was not being totally forthcoming regarding an event which should have presumably been significant. This supported the IAD's finding that her motives for marrying the Applicant may not have been true love.

[14] With regards to the anonymous call, the IAD indicated that it would not give it any weight. In my view, contrary to the Applicant's submission, the IAD's statement that the anonymous call was consistent with its ultimate finding, does not necessarily mean that it was given any weight in the IAD's decision.

[15] In the end, the IAD found the Applicant and his wife were not credible on the basis of all these concerns.

[16] It is trite law that credibility assessments are fact-based and must be afforded deference from this Court (*Nadasapillai v. Canada (Citizenship and Immigration)*, 2015 FC 72 at para 9; *Granata v. Canada (Citizenship and Immigration)*, 2013 FC 1203 at para 28; *Dunsmuir*, at para 53). Moreover, the IAD is presumed to have considered all the evidence before it (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL).

[17] In addition, it is not the role of this Court on judicial review to re-assess and re-weigh the evidence before the IAD, which is what the Applicant is seeking (*Canada (Minister of Citizenship and Immigration) v Abdo*, 2007 FCA 64 at para 13; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[18] Given the above, I find it was reasonable for the IAD, based on the evidence before it, to conclude on a balance of probabilities that the marriage was not genuine and was entered into primarily for the purpose of acquiring status or privilege under IRPA. Furthermore, it was open to the IAD to conclude that Angela was not being totally forthcoming regarding the circumstances relating to her migration attempt, and that the significant gaps in her knowledge regarding key facts in her spouse's life were significant negative factors. In my view, the inability to recall significant events is not a matter which relates to one's level of education. Accordingly, the IAD's decision is reasonable and falls within the range of acceptable outcomes which are defensible in respect to the facts and law.

[19] On a final note, even though there may appear to be confusion over which marriage was considered in the analysis of whether the primary purpose of the marriage was to acquire status and privilege under IRPA, given the disjunctive nature of the Regulation 4 test and the reasonableness of the IAD's conclusion on the lack of genuineness of the marriage, such confusion is not determinative.

[20] The parties did not propose any certified question in the present proceedings.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question will be certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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