

Federal Court



Cour fédérale

Date: 20170119

Docket: IMM-2856-16

Citation: 2017 FC 65

Toronto, Ontario, January 19, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

LY CHHOUM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ly Chhoum [the Applicant] has applied for judicial review of a decision of the Immigration Appeal Division [IAD] dated June 9, 2016 [the Decision] dismissing her appeal from a negative decision on a sponsorship application. This application is made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 55 year old woman from Cambodia. She came to Canada in 2004 and was sponsored by her second husband, Kim Seng. The Applicant is now a Canadian citizen. She has two children from her first marriage who accompanied her to Canada; her son Sereyvath Mean, born January 23, 1988, and her daughter Sokchia Mean, born December 20, 1989.

[3] After the Applicant arrived in Canada, her marriage to Mr. Seng failed and they were divorced in 2006.

[4] The Applicant knew Mr. Sorn Ra in Cambodia when they were children in primary school, but thereafter they lost touch. In 2007, the Applicant traveled to Cambodia to visit her sister. During that visit she reconnected with Sorn Ra, after he recognized her at the market.

[5] The Applicant submits that they fell in love during that visit and after an acquaintance of seven days, Sorn Ra proposed marriage [the Proposal]. The Applicant waited until she returned to Canada to accept the Proposal because, given her divorce, she was cautious about a new marriage.

[6] The couple married in Cambodia on August 10, 2008 in a Buddhist ceremony. The wedding was attended by approximately 150 people, including the Applicant's daughter [the Daughter], who traveled with her from Canada. Members from both families were present. The couple went on a honeymoon following the wedding.

[7] More than two years later, on September 25, 2010, the marriage was registered in Cambodia.

[8] The Applicant returned to Canada after the wedding. She subsequently visited her husband in Cambodia for four weeks in 2010, and four weeks in 2013. She also planned to return in 2012, but had to cancel the trip as her daughter required surgery. On December 23, 2013, the Applicant was in a motor-vehicle accident. She testified that she has not returned to Cambodia since then because she is sick and in pain.

[9] The Applicant periodically sends money to Sorn Ra in Cambodia, and in February 2011, the couple purchased a farm property there as equal partners. The Applicant said that she contributed \$4,000.00 to the purchase.

[10] The Applicant completed an application to sponsor Sorn Ra to come to Canada as a member of the family class. It is dated November 17, 2010, but was not submitted until March 2011. The application was denied on July 18, 2013.

[11] The Applicant appealed the decision to the IAD and a hearing was held on March 15, 2016. The Applicant and her Daughter testified in person and Sorn Ra testified by telephone. On June 9, 2016, the IAD issued the negative Decision under section 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

I. **DECISION**

[12] The IAD concluded that neither the Applicant nor Sorn Ra gave credible testimony and that, on a balance of probabilities, the marriage was entered into for immigration purposes and is not genuine. The IAD had the following concerns:

- Recognition of the Applicant not explained

Sorn Ra testified that he recognized the Applicant at the market because he knew her at school. However, he had not seen her since she was a child in grade 4 or 5. This means that he had not seen her for approximately 45 years. When asked how he was able to recognize the Applicant, he could not say.

- The Proposal was hasty

Sorn Ra testified that two days after their initial meeting, he told the Applicant he loved her and he made the Proposal seven days after their first meeting.

- The Location of the Proposal changed

The Applicant initially said that the Proposal was made at her sister's house but shortly thereafter said it had occurred during a meal at the market. Then she said that Sorn Ra had proposed at both locations.

- The Daughter was not considered

The Applicant's Daughter lived with her in Canada, yet there was no evidence that the Applicant or Sorn Ra discussed the marriage with the Daughter before the Proposal or its acceptance.

- Inconsistent evidence about the honeymoon

The Applicant stated that she and Sorn Ra went on their honeymoon alone. However, Sorn Ra testified that the Applicant's daughter accompanied them.

- Inconsistent evidence re plans

The Applicant said that, before the wedding, she and Sorn Ra did not discuss sponsorship or where they would live after their marriage. However, Sorn Ra said that the issue was discussed before the wedding, and that the Applicant wanted them to live in Canada.

- Sorn Ra had little knowledge

Sorn Ra had very little knowledge about the Applicant's marital history. He did not know how long her second marriage lasted or why it failed.

- The farm purchase was not explained

Regarding the purchase of a farm property in Cambodia in February 2011, the Applicant did not know why it was a good investment. She also could not say why she was investing in property in Cambodia in February 2011, while

sponsoring Sorn Ra to come to Canada. She only said that she purchased the property at his request.

- Visits were rare

The Applicant only visited Sorn Ra in Cambodia only twice. She visited for 4 weeks in 2010 and again in 2013. There was no explanation for her failure to visit for two years after the wedding or in 2011.

- The marriage was not promptly registered

The marriage on August 10, 2008 was not registered in Cambodia until September 25, 2010. The Applicant explained this delay of over two years on an election.

- Sponsorship took three years

The Applicant waited three years after the wedding to sponsor Sorn Ra. She explained that she did not trust him and wanted to observe his behaviour.

- Sparse evidence of ongoing communication

The Applicant and Sorn Ra produced telephone and Skype records which only start in June 2013. The IAD concluded that the couple did not experience meaningful communication as neither could describe their conversations in any detail. They simply testified that they spoke about their feelings.

[13] There was positive evidence to offset the concerns. It included the following:

- i. The wedding in 2008 appeared to be a well-attended family celebration.
- ii. The couple shared similar ethnic and religious backgrounds and they were both lonely.
- iii. The Applicant periodically sent Sorn Ra money. The payments started two years after the marriage. The amount was generally between \$200.00 and \$500.00. However, there was one payment of approximately \$1,100.00.
- iv. The Applicant said that she invested \$4,000.00 in the farm property at her husband's request. There was no documentary evidence of the payment. However, her name was on the deed to the property.

II. **The Issues and Discussion**

[14] The Applicant says that the Decision is unreasonable because the IAD engaged in speculation, ignored positive evidence and took a microscopic approach to the testimony. She also says that the IAD breached the principles of procedural fairness by not giving the Applicant an opportunity to address her concerns.

[15] The Applicant says that it was unreasonable of the IAD to speculate that her three year delay in sponsoring Sorn Ra was due to her concern that he had married her for immigration purposes [the Speculation]. At the hearing the Applicant was asked to explain the delay and she said that she didn't trust Sorn Ra and wanted to observe his behaviour. Neither Applicant's

counsel, nor the IAD, asked her to provide the reason for her lack of trust. In these circumstances there was insufficient evidence to justify the Speculation and I have therefore concluded that it was unreasonable. However, this error is not material when the Decision is considered as a whole.

[16] The Applicant also says that the IAD ignored or minimized the positive evidence. However, I am not persuaded by this submission. It was all discussed, but when all the evidence was considered, it was found not to be indicative of a genuine marriage.

[17] The Applicant submits that the IAD erred when it stated that no evidence was presented to show how Sorn Ra recognized the Applicant after so many years. She says that she testified that he told her that he remembered her from school. The IAD was clearly dissatisfied with his evidence and continued to question, reasonably in my view, how Sorn Ra could identify a mature middle aged woman based on his memory of her as a young child.

[18] The Applicant also said that the IAD ignored evidence about why they fell in love and agreed to marry. However, the IAD said in the Decision that the Applicant “kept emphasizing that they come from the same ethnic background”, and later on added that “he is kind and gentle and he loves her”. Accordingly, this evidence was not ignored.

[19] The Applicant says that it was unreasonable of the IAD to express concern that the Proposal was not for a genuine marriage, because there was no evidence that either party considered the Applicant’s adult children. Drawing inferences based on a lack of evidence is

open to the IAD, but such inferences should only be drawn in clear cases. In this case, the Daughter has been very ill, is still not strong and lives with the Applicant. In these circumstances, it was reasonable to draw a negative reference from the fact that neither the Applicant, nor Sorn Ra considered discussing the Proposal with the Daughter.

[20] One of the IAD's principal concerns was a lack of meaningful communication [the Conclusion]. The Applicant says that the telephone and Skype invoices (together the Invoices) which show ongoing and substantial communication were not considered. It is true that the IAD did not mention the Invoices. However, the assumption is that they were considered and the IAD was only required to refer to them if they contradicted the Conclusion. I therefore reviewed them and found that they do not contradict the Conclusion. They show minimal interaction. For this reason, the IAD did not err in failing to refer to them. My reasons include the following:

- In the seven months from June to December 2013, there are telephone calls lasting approximately 3 hours in total. Further, in this period, there is no evidence of any calls in July, August and November.
- In the four months from January to April 2014, there were calls totalling approximately 6 hours. However, there is no evidence of any phone calls from May to August 2014 when the telephone records end.
- The Skype records begin in September 2014 and are unclear for that month. However, in the year from October 2014 to October 2015, the Applicant and Sorn Ra spent approximately 21 hours, or only two hours per month, on Skype. There is no evidence of only contact by Skype in August and September 2015.

[21] This review also suggests that the Applicant was not truthful when she testified that she and Sorn Ra communicated by phone and Skype 2-3 times a week.

[22] The Applicant also says that the IAD breached the rules of procedural fairness when the Member failed to advise the Applicant that she was concerned about a lack of meaningful communication. The Applicant says she should have been given an opportunity to address this concern.

[23] I am not persuaded by this submission. The Applicant knew that meaningful communication would be an issue because the negative sponsorship decision which led to the appeal was based in part on a lack of evidence of meaningful communication. In these circumstances the Applicant cannot complain that she was not told that this topic would be of concern to the IAD.

[24] For all these reasons, the application for judicial review will be dismissed.

III. **Certified Question**

[25] No question was posed for certification for appeal.

JUDGMENT

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

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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