Federal Court  Cour fédérale

Date: 20170428

Docket: IMM-3644-16

Citation: 2017 FC 422

Ottawa, Ontario, April 28, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

LAP TRUNG TRUONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant Mr. Lap Trung Truong wished to sponsor his spouse, Mrs. Thuy Linh Thy Nguyen, for permanent residence in Canada. An immigration officer dismissed Mr. Truong's application on the grounds that the marriage is not genuine, and that the couple has entered into their relationship primarily for the purpose of obtaining status or privilege under the *Immigration*

and Refugee Protection Act, SC 2001, c 27. Therefore, Mrs. Nguyen could not qualify as a member of the family class and be eligible for sponsorship by Mr. Truong, as provided by subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] Mr. Truong appealed the officer's decision to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada. In August 2016, the IAD dismissed Mr. Truong's appeal, agreeing with the officer's conclusion that the marriage was motivated primarily by a desire to obtain an immigration advantage.

[3] Mr. Truong has applied to this Court for judicial review of the IAD's decision. He argues that the decision is unreasonable because it failed to assess the evidence he had provided on the genuineness of his marriage, misconstrued the facts and evidence presented, and erroneously engaged in a microscopic analysis of the evidence. Mr. Truong asks this Court to quash the decision and to send it back to the IAD for redetermination by a different panel.

[4] The only issue raised by Mr. Truong's application is whether the IAD's decision is unreasonable.

[5] Having considered the evidence before the IAD and the applicable law, I can find no basis for overturning the decision. The IAD's decision was responsive to the evidence and the outcome is defensible based on the facts and the law. It falls within the range of possible, acceptable outcomes. I also find that the reasons for the decision adequately explain how the IAD concluded that Mr. Truong's marriage to Mrs. Nguyen is not genuine and was entered into

primarily for the purpose of obtaining immigration status in Canada. I must therefore dismiss Mr. Truong's application for judicial review.

II. Background

A. *The factual context*

[6] Mr. Truong is a 46 years-old Canadian citizen of Vietnamese origin, who landed in Canada in April 1991. From October 1999 to somewhere between 2008 and 2010, Mr. Truong was in a common-law relationship with another woman, with whom he had two sons. The children were born in May 2001 and May 2005. Mrs. Nguyen is a 45 years-old Vietnamese national, who was previously married from September 2000 to August 2007. With her first husband, she had a daughter born in May 1996.

[7] Mr. Truong and Mrs. Nguyen met in 2009, through Mrs. Nguyen's brother, who is Mr. Truong's roommate and co-worker at a restaurant where Mr. Truong works part-time. Mr. Truong and Mrs. Nguyen initially communicated via phone and yahoo-chat, and met in person in March 2010 when Mr. Truong travelled to Vietnam. Mr. Truong stayed in Vietnam for three weeks, during which he proposed to Mrs. Nguyen. She only accepted the proposal after he returned to Canada.

[8] In November 2010, Mr. Truong went back to Vietnam for several weeks accompanied by his two sons from his previous relationship. Mr. Truong, his children and Mrs. Nguyen all stayed at his mother's place in Vietnam for the duration of his visit. On December 17, 2010, Mr. Truong

and Mrs. Nguyen married in Vietnam. Mr. Truong's two sons did not attend the marriage ceremony and they in fact do not know that their father remarried, as he is planning to tell them when they will be old enough to understand and when his wife will come to Canada. Mr. Truong introduced Mrs. Nguyen and her daughter to his sons as "auntie" and "auntie's daughter".

[9] After the marriage, Mrs. Nguyen remained in Vietnam and Mr. Truong came back to Canada. Mr. Truong returned to Vietnam three times since then, in each of 2012, 2014, and 2015. Mr. Truong and Mrs. Nguyen never had children together.

[10] Mr. Truong applied to sponsor his wife and step-daughter for permanent residence in May 2011. The sponsorship application was rejected in December 2014 after Mrs. Nguyen's initial screening and an interview held in December 2013. The Global Case Management System's notes identified a number of concerns arising from Mrs. Nguyen's interview. These included: her limited knowledge about Mr. Truong's life in Canada or his previous common-law relationship; her inability to answer questions directly; the scarce information supporting the genesis and evolution of her relationship with Mr. Truong; the fact that Mr. Truong did not visit her for two years after the wedding; the lack of satisfactory evidence about the severance of Mr. Truong's relationship with his former common-law partner; and the absence of Mr. Truong's mother at the marriage ceremony.

B. *The IAD decision*

[11] In its decision, the IAD analyzed the genuineness of Mr. Truong's marriage through several factors.

[12] The IAD first concluded that there was insufficient and inconsistent evidence about the genesis and evolution of Mr. Truong and Mrs. Nguyen's relationship, and about the end of the relationship between Mr. Truong and his previous common-law partner. Mr. Truong and Mrs. Nguyen both testified that Mr. Truong's previous relationship ended in 2008, but this was inconsistent with the documentary evidence revealing that it still existed until at least February 2010. Neither Mr. Truong nor Mrs. Nguyen, in the eyes of the IAD, provided a satisfactory explanation for this inconsistency.

[13] The IAD then noted that Mr. Truong testified that he was living with his brother-in-law for about a year, before clarifying that they had been living together, at the same address, for seven years. However, Mrs. Nguyen provided evidence that her brother was living at a different address when she completed her additional family information form. When asked about the brother-in-law's marital status, Mr. Truong indicated that he was divorced, while Mrs. Nguyen mentioned that he was remarried and in the process of sponsoring his spouse to Canada from China. As neither Mr. Truong nor Mrs. Nguyen provided any explanation about this inconsistency, the IAD inferred that at least one of them was not credible and that the two spouses did not communicate with each other to the degree they claimed.

[14] The IAD also observed that Mr. Truong said he had two jobs, but had failed to include this on his sponsorship questionnaire. Mr. Truong refused to take responsibility for his application documents, blaming those who assisted him in completing the forms for all the inconsistencies they contained, as well as for inconsistencies with his testimony. Referring to *Robles v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 374 [*Robles*] at para 31,

the IAD mentioned that absent exceptional circumstances, it should be able to rely on the information provided through an applicant's representatives. The IAD also concluded that the contents of the questionnaires can be relied upon in finding evidentiary inconsistencies, relying on *Vieira v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 626 at para 29.The IAD concluded that the information provided on Mr. Truong's behalf could not be seen as meaningless and that, in the absence of evidence of incompetence, Mr. Truong should be held accountable for the work of his advisor.

[15] The IAD then noted the discrepancies with regard to Mr. Truong's and Mrs. Nguyen's first face-to-face meeting. Mr. Truong claimed that he was met at the airport by his sister and Mrs. Nguyen and that his sister introduced them, while Mrs. Nguyen explained that she was alone with Mr. Truong. The IAD also detected inconsistencies regarding Mr. Truong's sons' knowledge of his marriage. Mr. Truong testified that his sons were still ignorant up to the June 2016 hearing date. Mrs. Nguyen, on the other hand, testified that the oldest son was aware of the marriage since he turned 15, a few months before the hearing. No explanation was given regarding this discrepancy, qualified as important by the IAD.

[16] The IAD also had some problems with the fact that Mr. Truong's mother did not attend the marriage ceremony. Mr. Truong testified that his mother's health was such that she could not attend the wedding. However, he provided no documentary evidence to that effect, and the IAD observed that his mother was well enough to care for his two young sons so that Mr. Truong and Mrs. Nguyen could have their honeymoon immediately following the ceremony.

[17] The IAD noted that the spouses' respective version of the proposal was different. Mrs. Nguyen said that Mr. Truong proposed during his visit to Vietnam in March 2010, but that she only accepted his proposal in September 2010. On the other hand, Mr. Truong indicated that Mrs. Nguyen accepted the proposal in March 2010, within a week of Mr. Truong's return to Canada. The IAD further identified some discrepancies with regard to Mr. Truong's previous common-law relationship with the mother of his two sons. Even though Mr. Truong alleged that he had no contact with her since 2008, beyond arrangements to see the children, the evidence showed that they crossed the United States border together in August 2011.

[18] The IAD indicated that evidence of Mr. Truong and Mrs. Nguyen's financial integration was limited at best, but that financial remittances increased after the refusal of the sponsorship application was issued, leading it to conclude that the remittance documents had been provided to bolster Mr. Truong's appeal before the IAD. There was also little evidence provided about any credible future plans together.

[19] The IAD mentioned several times that the evidence presented by both Mrs. Nguyen and Mr. Truong was not particularly credible and trustworthy, given the numerous contradictions in several important areas. The IAD observed that, if the evidence leads to a finding that the marriage is not genuine, a presumption would apply that the marriage was entered into primarily for the purpose of acquiring a status and it would therefore not need to make a finding on this, citing *Kaur v Canada (Citizenship and Immigration)*, 2010 FC 417 [*Kaur*] at para 16. The IAD therefore concluded that, on a balance of probabilities, the marriage was not genuine, and that Mrs. Nguyen was therefore disqualified as a spouse.

C. *The standard of review*

[20] This Court has consistently held that decisions of the IAD, as an expert tribunal, are to be assessed on the reasonableness standard and are owed deference (*Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207 [*Nguyen*] at para 11; *Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 [*Burton*] at para 13). More specifically, whether a marriage is entered into for the primary purpose of immigration is a question of mixed facts and law and a highly factual determination, subject to review on a reasonableness standard (*Burton* at para 15; *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 [*Bercasio*] at para 17; *Aburime v Canada (Citizenship and Immigration)*, 2015 FC 194 at para 19).

[21] When reviewing a decision on the standard of reasonableness, the analysis is concerned "with the existence of justification, transparency and intelligibility within the decision-making process", and the IAD's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at para 17).

III. Analysis

[22] Mr. Truong submits that the IAD erred in ignoring evidence that was credible and trustworthy and in misinterpreting the evidence before it. He contends that the IAD's decision was based on speculation and conjecture, and that his evidence was wrongly rejected as not credible. Whether it was for the discrepancy on the date of the proposal, the address of Mrs. Nguyen's brother, the absence of his mother at the wedding, or his entry in the United States with his former partner in 2011, Mr. Truong contends that reasonable explanations were given for all the contradictions raised by the IAD, and that these contradictions should not have resulted in an adverse credibility finding against him and Mrs. Nguyen. According to Mr. Truong, relying on the inconsistencies constituted an over-exacting and microscopic approach by the IAD.

[23] Mr. Truong further submits that, if the evidence is instead considered in its totality, it shows that, on a balance of probabilities, he and Mrs. Nguyen are engaged in a genuine relationship that has not been entered into primarily for immigration purposes. In the present case, Mr. Truong and Mrs. Nguyen have similar backgrounds, are of Vietnamese origin, speak the same language, are of similar age, have children, and they both demonstrated knowledge of each other's previous relationships, employment status and background. There is also documentary proof of financial support, phone bills, photographs of the wedding, and airline tickets and passport pages of Mr. Truong confirming his visits in Vietnam. According to Mr. Truong, this evidence was before the IAD and, in analyzing the totality of the evidence, it was

unreasonable for the IAD to conclude that the marriage was not genuine and was entered primarily for immigration purposes.

[24] Mr. Truong also pleads that he provided a reasonable explanation regarding the discrepancies between his testimony and the forms, considering that he relied on a consultant to fill out the forms and did not verify the information before signing them.

[25] I do not agree with Mr. Truong.

[26] I acknowledge that Mr. Truong skillfully combed through the IAD's reasons, signaling portions of the evidence cited by the panel which would have favored him and pointing out where the IAD failed to mention other evidence. Mr. Truong also referred to several authorities in which the Court was critical of reasons that did not cite all the evidence. However, I find Mr. Truong's arguments unconvincing. They merely boil down to an invitation to the Court to substitute itself to the decision-maker. Unfortunately for Mr. Truong, this is not an appeal but a judicial review.

[27] Even if I were left with some doubt regarding some factual determination made by the IAD, my role in a judicial review is not to make the determinations that I might have made had I been in the shoes of the IAD. Rather, it is to determine whether the determinations of the IAD were reasonable and fall within the range of possible, acceptable outcomes (*Dunsmuir* at para 47). Many questions that come before administrative tribunals such as the IAD do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible,

reasonable conclusions. But reasonableness is a deferential standard and tribunals "have a margin of appreciation within the range of acceptable and rational solutions" (*Dunsmuir* at para 47; *Newfoundland Nurses* at para 13).

[28] The issue is not whether the IAD's decision meets the standard or the level of detail that Mr. Truong wished it would have contained; the issue is whether the decision meets the requirements of reasonableness. The IAD may not have referred to some evidence as clearly as Mr. Truong would have preferred, but this is not a ground for judicial review. Reasonableness, not perfection, is the standard. In the same vein, the question is not whether the explanations or views offered by Mr. Truong might be a reasonable reading of the evidence. The question is whether the conclusions reached by the IAD fall within the range of possible, acceptable outcomes. The fact that there could be other plausible or reasonable options, and that one of them could be supporting the genuineness of Mr. Truong's relationship with Mrs. Nguyen, does not imply that the interpretation retained by the IAD was unreasonable.

[29] A recurring theme in the jurisprudence respecting citizenship matters such as applications for spousal sponsorship is that each case is fact-specific and must be determined on its own merits. In this case, the IAD did not ignore the evidence. It simply found it insufficient to demonstrate the existence of a genuine relationship between Mr. Truong and Mrs. Nguyen. It is well established that the onus is on an applicant to demonstrate that a marriage is genuine. Mr. Truong's disagreement with the weight afforded to the evidence he presented does not raise an error warranting this Court's intervention. The IAD instead drew, in my view, reasonable inferences from the inconsistencies in the evidence.

[30] I find that there was considerable evidence to support the IAD's determinations. Among the numerous inconsistencies found by the IAD, I can mention the following: inconsistency between Mr. Truong's former common-law spouse and Mr. Truong's testimony regarding the end of his former relationship; inconsistent evidence given by Mr. Truong and Mrs. Nguyen regarding the marital status and the address of Mrs. Nguyen's brother; inconsistent evidence given by Mr. Truong and Mrs. Nguyen regarding their first in-person meeting and whether anyone else was present; and inconsistent evidence given by Mr. Truong and Mrs. Nguyen regarding whether Mr. Truong's sons were aware of the marriage.

[31] On virtually every point, Mr. Truong offers an alternative interpretation. For the discrepancy on the date of the proposal, he contends that Mrs. Nguyen said numerous times that the marriage proposal was in March 2010, but that the interpreter kept saying it was in September 2010 during the interview, and that Mrs. Nguyen herself did not fill out the forms. With respect to the discrepancy regarding the address of Mrs. Nguyen's brother, Mr. Truong submits that Mrs. Nguyen's brother was living with his girlfriend at her address during a period of time in 2011 and that he does not know why Mrs. Nguyen listed her brother's address as living elsewhere than with him. About his former common-law partner, Mr. Truong alleges that that they crossed the border together in 2011 because his former common-law partner needed his help since her sister was held by border authorities. Turning to the absence of his mother at the marriage, Mr. Truong contends that he explained to the IAD that his mother suffers from arthritis and that she was not alone to take care of Mr. Truong's sons during his honeymoon.

[32] However, Mr. Truong failed to produce the necessary evidence to corroborate his various explanations, and the IAD was therefore entitled to draw negative credibility findings in that regard. Despite the fact that Mr. Truong provided documentary evidence of the genuineness of the relationship, such as photographs, airline tickets, phone bills and proof of financial support, it was open to the IAD "to give more weight to the discrepancies than to the documentary evidence provided" (*Kaur* at para 27). As stated by the jurisprudence, it is acceptable for the IAD "to place little weight on certain material elements (plane tickets, numerous photos, calling cards, etc.) given the credibility problems identified" (*Keo v Canada (Citizenship and Immigration)*, 2011 FC 1456 [*Keo*] at para 33). It was therefore reasonable for the IAD to conclude that Mr. Truong did not discharge his onus to prove that his marriage to Mrs. Nguyen was genuine, given the numerous inconsistencies and the credibility issues.

[33] I add that, in my view, the IAD did not err in rejecting Mr. Truong's explanation for the inconsistencies which he blamed on the lack of care of his representative. The *Robles* case relied on by the IAD clearly establishes that a decision-maker is entitled to draw a negative inference from immigration documents, even when incompetence of the representative is alleged. The alleged incompetency of an immigration consultant does not preclude the IAD to make adverse credibility findings based on the forms (*Robles* at paras 31, 42-43). It is trite law that "persons have to accept the consequences of their choice of counsel" (*Robles* at para 31).

[34] I should point out that the inconsistencies in the forms filled by the consultant were not the only inconsistencies raised by the IAD. The inconsistencies on the date of the proposal, on the address of Mrs. Nguyen's brother, on whether Mr. Truong's children knew about their

father's new wife, and on whether they were alone or with Mr. Truong's sister at their first face-to-face meeting, were all inconsistencies based on Mr. Truong's and Mrs. Nguyen's respective testimonies. Similarly, inconsistencies regarding the absence of Mr. Truong's mother at the wedding because of health issues, and with regard to Mr. Truong's previous common-law relationship, were not related to alleged errors of the consultant.

[35] I pause to mention that the evidence of financial interest integration does not lend a very strong support to the IAD's conclusion regarding the increase in these remittances after the refusal of the spousal sponsorship. At best, it is contradictory and could have led to an opposite conclusion on this particular point. The total amounts sent by Mr. Truong in the two years preceding the rejection of his spousal application were actually higher than the amounts he sent in the year after the refusal. Only when the average amounts sent per month, per year or per transfer are considered for the whole period of their relationship can it be said that, in line with what the IAD concluded, the evidence reflects a small increase effectively occurring after the rejection. That said, even if I found that the IAD committed a factual error here, this error alone is not determinative and does not change the outcome of the decision (*Sherwani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 37 at para 17).

[36] It is also well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at para 1). Mr. Truong did not give examples of evidence that was not assessed by the IAD, or of evidence that squarely contradicted the findings of the IAD (*Cepeda-Gutierrez v Canada (Minister of Citizenship and*

Immigration), [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at para 17). Moreover, a failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland Nurses* at para 16). It is only when a tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez* at paras 16-17). This is not the case here.

[37] The arguments put forward by Mr. Truong simply express his disagreement with the IAD's assessment of the evidence and ask the Court to prefer his own assessment and reading to that of the tribunal. In essence, Mr. Truong is inviting the Court to reweigh the evidence that he has presented before the IAD. However, in conducting a reasonableness review of factual findings, it is not the role of the Court to do so or to reassess the relative importance given by the decision-maker to any relevant factor or piece of evidence. It is clear that the testimonies of both spouses were quite different on central elements of the relationship. This Court does not have to decide which version is more probable. It suffices to conclude that the reasoning process of the IAD is not flawed and it is supported by the evidence. Mr. Truong's explanations were all dealt with and considered but they were just not retained by the IAD.

[38] A reviewing court owes particular deference to the IAD on credibility issues, which are central to the analysis of the genuineness of a relationship (*Keo* at para 24). This applies even more so in a case like this, where people seeking to deceive the immigration authorities would want to make their marriage look genuine. As recently indicated by the Court, "assessing the

genuineness of a marriage is a challenging task at the best of times", in a context where people "who are intent on committing a form of deceit to gain the highly valuable status of Canadian permanent residence will conduct themselves to make the relationship look outwardly genuine, when it is not" (*Nguyen* at para 21, citing *Bercasio* at para 23). It is a highly factual determination at the heart of the IAD's expertise and functions. Even though the Court might have evaluated the evidence differently, it should not intervene and substitute its own view of a preferable outcome when the decision is justifiable, transparent and intelligible and falls within the confines of possible, acceptable outcomes.

[39] I also reject Mr. Truong's suggestion that the IAD's analysis was unreasonably "microscopic" or overzealous. I acknowledge that it is not proper for a decision-maker to base its findings on extensive or overly minute examination of issues and inconsistencies that are irrelevant or peripheral to the claim, thereby ignoring serious incidents central to the evidence (*Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442 (FCA) at para 2; *Zhang v Canada (Citizenship and Immigration)*, 2014 FC 713 at para 27). But this is not a situation where the IAD erroneously applied a "microscopic examination" of Mr. Truong and Mrs. Nguyen's testimonies or relied on "peripheral discrepancies" to discredit them. An analysis does not become microscopic because it is rigorous and comprehensive. The factors looked at by the IAD were not issues secondary to Mr. Truong's appeal of the RPD decision; they were instead highly relevant and went to the very essence of the question at stake, namely whether his marriage with Mrs. Nguyen was genuine or not (*Konya v Canada (Citizenship and Immigration)*, 2013 FC 975 at paras 21-22).

[40] Reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). A judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should instead approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15). When read as a whole, the IAD's decision shows that the panel properly assessed all the necessary factors and provided an analysis of the evidence presented. The intervention of this Court is not warranted.

IV. Conclusion

[41] The IAD's refusal of Mr. Truong's appeal on the ground that his marriage is not genuine and that the couple has entered into their relationship primarily for the purpose of obtaining immigration status represents a reasonable outcome based on the law and the evidence before the panel. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. Therefore, I must dismiss Mr. Truong's application for judicial review.

[42] Neither party has proposed a question of general importance for me to certify. I agree there is none.

JUDGMENT in IMM-3644-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Krassina Kostadinov	FOR THE APPLICANT
Rachel Hepburn-Craig	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT