Federal Court Cour fédérale

Date: 20180115

Docket: IMM-3077-17

Citation: 2018 FC 32

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 15, 2018

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

And

CALSONY CHARLES GENTER

Respondent

JUDGMENT AND REASONS

[1] The Minister of Citizenship and Immigration (the Minister) is applying to have the June 1, 2017, decision of the Immigration and Refugee Board of Canada, Immigration Appeal Division (IAD), set aside. That decision allowed the respondent's appeal against the refusal of a visa officer at the Canadian Embassy in Cameroon (the visa officer) to grant the application for permanent residence filed by his wife, Mbu Gayle Bessem, on the grounds that the spouses'

marriage is not genuine and that it was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), which is prohibited under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations).

[2] The respondent is from Cameroon. He was born in 1952. He immigrated to Canada in 1989 and became a permanent resident in 2004. He was granted Canadian citizenship in 2008. He holds a degree in English Literature from a university in London. He was a teacher in some African countries before he came to Canada. He works here as a security guard.

[3] In May 2005, the respondent went to Cameroon to mourn his parents and one of his sons born from a previous relationship. He stayed there for a month. At the end of his stay, at a party organized by one of his uncles, he was introduced to Ms. Bessem, who is 27 years his junior and the mother of a child from a previous relationship. Back in Canada, the respondent kept in touch with Ms. Bessem by telephone. In 2006, Ms. Bessem gave birth to a second child that was not his. The following year, the respondent asked Ms. Bessem to marry him. She accepted. The wedding took place in Cameroon on November 30, 2009. The respondent spent a month there for the occasion. It was the first time the new spouses had seen each other since they had met in May 2005. They did not see each other again until 2014, when the respondent visited Ms. Bessem and her children in Cameroon.

[4] Ms. Bessem filed her application for a permanent resident visa as a member of the family class in April 2011. Her application was sponsored by the respondent. After having answered the

visa officer's questions during the usual interview held in May 2013, her application was denied.

The visa officer provided the following grounds for his denial:

> [TRANSLATION]
>
> I am not convinced that this is a genuine relationship, and the main concerns, as expressed to you during the interview, are as follows:
>
> - You have limited knowledge about your sponsor and his life in Canada, even though you indicated that you have had a relationship with him since 2005. For example, you said all you know about his life in Canada is that he works as a security guard and rests during his days off. When you were asked about your conversations, you said you tell him only that you love him, and he tells you that he loves you and your children. After nearly eight years of telephone conversations, it is reasonable to expect that a genuine couple will have discussed their daily activities and interests.
>
> - You met your sponsor briefly in 2005. You exchanged phone numbers, and he called you when he returned to Canada. For four years, you talked on the phone, and he returned to marry you in 2009. You spent less than 30 days together and have not seen him since your wedding day. You have not filed any evidence regarding the phone conversations or communications in the last eight years and were unable to explain how you developed and maintained your relationship entirely by telephone.
>
> - As indicated above, you and your sponsor spent less than 30 days together during the eight-year relationship that you reported.
>
> - I have reviewed the photos that you filed and am not convinced that they constitute proof of your marital relationship. The only photos filed were taken during the civil ceremony and do not prove a genuine marital relationship. You have not filed any additional photos to show other activities during this short visit or any photos that you may have mailed each other during your relationship.
>
> - You said you love your sponsor because he helps you financially and because he loves your children. You have not been able to provide a reason for the relationship

> beyond that support, such as common interests or common values that a genuine couple would normally be expected to share.
>
> I am not convinced that this relationship is genuine and that it was not entered into for the purpose of acquiring any status or privilege under the Act. As a result, within the meaning of the Regulations, you are not considered a spouse and are therefore not a member of the family class.

[5] Unlike the visa officer, the IAD deems the marriage to be genuine and does not believe that its purpose was to provide Ms. Bessem with any status or privilege under the Act. Its conviction is based primarily on the respondent's testimony and, to a lesser extent because of technical difficulties, on Ms. Bessem's testimony. Consequently, on the basis of these testimonies, it finds that, notwithstanding their great difference in age and widely differing levels of education, the relationship between the two spouses is genuine.

[6] Moreover, the IAD does not find it implausible that their budding relationship could thrive despite the fact that Ms. Bessem had a child with another man the year after the future spouses first met. Recognizing that all this may seem odd, it points out that the respondent chose to forgive her, which would have made Ms. Bessem realize how lucky she was to be loved by a man like the respondent. The IAD is also not overly concerned about the limited time the spouses have spent together since they first met, accepting the respondent's explanation that he prefers to use his quite modest income to provide financial support for Ms. Bessem and her children rather than visit them in Cameroon.

[7] Moreover, the IAD acknowledges that there are inconsistencies and contradictions, some of which do not seem to make any sense, in the forms completed by both spouses for

Ms. Bessem's application for permanent residence. However, it does not find them very important. It states the following in this regard:

> [16] [TRANSLATION] . . . In the specific context of this appeal, I do not find it very important, noting that Ms. Bessem had difficulty understanding the questions during her testimony, that she is not familiar with the formalities involved in this type of process. I also believe that this is the approach to be taken when interpreting the answers she provided the immigration officer during her interview.

[8] The Minister finds that the evidence before the IAD, rife with contradictions and inconsistencies, was clearly insufficient to conclude, on a preponderance of the evidence, that the marriage between the respondent and Ms. Bessem is genuine and that its purpose was not to acquire any status or privilege under the Act.

[9] In particular, he criticizes the IAD for reversing the visa officer's decision without addressing the many problems revealed by the evidence before it and without providing any rationale for finding as it did. The Minister summarizes these problems as follows in paragraph 21 of his factum:

a) [TRANSLATION] The spouses provided conflicting evidence as to when they supposedly got in touch for the first time;

b) [Ms. Bessem] provided conflicting evidence with respect to the termination of her relationship with her former common-law partner, who is the father of her two sons;

c) The spouses provided conflicting evidence with respect to the date and circumstances surrounding the marriage proposal;

d) The spouses did not know each other very well, especially [Ms. Bessem] with regard to her husband;

e) The spouses, who were separated by a wide difference in age and education, failed to discharge their burden of showing what they had in common;

f) The spouses did not file any concrete evidence to demonstrate how they developed and maintained their spousal relationship during the eight years of physical separation.

[10] The Minister is also well aware that the standard of review applicable to the IAD decision in this case is that of reasonableness, which means that the Court will intervene only if it is satisfied that the IAD's decision does not possess the characteristics of reasonableness that are justification, transparency and intelligibility within the decision-making process and the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47, [2008] 1 SCR 190; *Canada (Citizenship and Immigration) v. Moise*, 2017 FC 1004, at paras. 17-18 [*Moise*]).

[11] This is a stringent standard, but I am of the view that it has been satisfied in this case.

[12] According to section 12 of the Act, the selection criterion applicable to a foreign national who wishes to immigrate to Canada as a member of the "family class" is their relationship with a Canadian citizen or a permanent resident, in particular, their spousal relationship. However, for this spousal status to be valid for the purposes of the Act and in accordance with section 4 of the Regulations, the marriage between the spouses must be genuine and not entered into for the purpose of acquiring any status or privilege under the Act.

[13] In the very recent *Moise* decision, my colleague Justice Yvan Roy pointed out how section 4 of the Regulations must be interpreted and the burden it imposes on spouses:

> [15] The burden on the respondent is to demonstrate, on a balance of probabilities, that her marriage is genuine and that it was not entered into primarily for the purpose of acquiring a status. Indeed, a marriage is disqualified if either of the conditions set out in paragraphs 4(1)(a) and (b) is not met (*Mahabir v. Canada (Citizenship and Immigration)*, 2015 FC 546 and *Singh v. Canada (Citizenship and Immigration)*, 2014 FC 1077). In other words, the respondent must meet both conditions. A marriage entered into for the purpose of acquiring a status or privilege will be flawed even if it subsequently becomes genuine. As well, a marriage that is validly entered into can become flawed for immigration purposes if it loses its genuineness.
>
> [16] On its face, the provision sets forth two different times when evaluations must be conducted. Regarding the genuineness of the marriage, the Regulations use the present tense, meaning that the genuineness of the marriage is evaluated at the time of the decision. On the other hand, the evaluation of the intent with which the marriage was entered into, i.e. primarily to acquire a status or a privilege, is in the past. The English reads "was entered" while the French reads "visait"; the evaluation is therefore conducted at the time of the marriage.

[14] To determine the real reason for a marriage or whether it is genuine, a number of factors, such as the length of the relationship before marriage; the compatibility of the spouses, especially with respect to their age, financial situation and respective interests; development of the relationship; communications between them, including visits they may have made; and how well they know each other, including previous marriages, are relevant.

[15] At the hearing of this judicial review, counsel for the respondent did not deny that, although they had been in a relationship for 12 years, Ms. Bessem had limited knowledge of the respondent. Nor did he deny the contradictions and inconsistencies in the spouses' evidence

identified by the Minister, but he did find that the Minister exaggerated them. He also emphasized the [TRANSLATION] "particular and unique circumstances of the case" and ultimately did not see any errors in the IAD's assessment of the evidence before it.

[16] What I do find to be fatal to the IAD's decision is how it dealt with the contradictions and inconsistencies, which the IAD admitted to noting and, in some cases, finding nonsensical. The IAD more or less swept them under the rug, blaming them on technical difficulties encountered when Ms. Bessem testified by telephone from Cameroon, and the fact she was not familiar with the formalities involved in the process that she and the respondent undertook under the Act, which according to the IAD, would also explain the answers she gave the visa officer during her interview.

[17] However, in my view, the IAD had to explain how it addressed the inconsistencies and contradictions other than by attributing them to an extrinsic factor, the technical difficulties that arose during Ms. Bessem's testimony, and a highly problematic and, in some respects, purely speculative factor, Ms. Bessem's lack of familiarity with the formalities involved in this process.

[18] In fact, nothing was said about the inconsistencies and contradictions. It was not enough to say that there were inconsistencies in the evidence. They also needed to be addressed, which the IAD did not do, or did not do well enough for its decision to meet the requirements of reasonableness. In addition, the interview notes recorded by the visa officer, which provide a detailed account of Ms. Bessem's limited knowledge of the respondent after an eight-year relationship, were not considered. The IAD chose to rely essentially on what the respondent

knew and thought about the relationship. Furthermore, the IAD did not review the inconsistencies as to when Ms. Bessem's relationship with her former spouse ended and the dates of the first meeting and the marriage proposal, which it should have done since the evidence on file simply does not provide grounds for finding that these contradictions and inconsistencies may have been due to Ms. Bessem's lack of familiarity with this process.

[19] Also, after being in a relationship for 12 years, Ms. Bessem still did not know anything about the respondent's previous union and his children from that relationship, just as she was unaware of her husband's level of education. The IAD did not make any mention of this either. I would add that the wedding took place more than four years after the first and only meeting between the two spouses, which lasted one evening. The relationship essentially developed over the phone during this period, but there is little concrete evidence of the frequency and content of these conversations, as the visa officer noted. However, the burden was on the spouses to present the best possible evidence in this regard. Given the known contradictions and inconsistencies, and in these circumstances, it would be difficult to explain that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the Act. This examination was to be conducted in light of the circumstances prevailing at the time the marriage took place (*Moise*, at para. 16). Nothing in the IAD's reasons for decision indicates that such an examination was conducted. As we have seen, it is not enough to be satisfied that the marriage is genuine at the time of the hearing before the IAD. It is also necessary to go back to the time when the marriage took place and ask why the spouses really entered into the marriage, as required under paragraph 4(1)(*a*) of the Regulations.

[20] Among other things, a review of the reasonableness of a decision is concerned with the quality of the reasons for the decision. In other words, if, in light of the evidence on file, the reasons for the decision do not provide an understanding of the administrative decision-maker's finding, the Court will be justified in intervening (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 14; [2011] 3 SCR 708). I believe that is the case here.

[21] Consequently, the Minister's application for judicial review will be allowed. The parties have agreed that no serious questions of general importance arise from this case.

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Immigration and Refugee Board of Canada, Immigration Appeal Division, dated June 1, 2017, allowing the respondent's appeal, is set aside, and the matter is referred to another Appeal Division panel for redetermination;
3. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3077-17
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. CALSONY CHARLES GENTER
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 8, 2018
JUDGMENT AND REASONS:	LEBLANC J.
DATED:	JANUARY 15, 2018

APPEARANCES:

Suzanne Trudel	FOR THE APPLICANT
Hervé Edgard Chrysostome	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin Deputy Attorney General of Canada Montréal, Quebec	FOR THE APPLICANT
Hervé Edgard Chrysostome Counsel Montréal, Quebec	FOR THE RESPONDENT