

Federal Court



Cour fédérale

Date: 20180206

Docket: IMM-3220-17

Citation: 2018 FC 134

Toronto, Ontario, February 6, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

ANGELA WEAVER-THOMAS

Applicant

and

**MINISTER OF IMMIGRATION REFUGEE
AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

[1] The present Application challenges a decision of the Immigration Appeal Division (IAD) dated June 22, 2017 in which the Applicant's sponsorship application for permanent residence was rejected.

[2] The basic history of the sponsorship application is as follows:

The Applicant is a citizen of Canada. The Applicant married her husband, a citizen of Trinidad and Tobago, in 2007, and he applied

for permanent residence under the spousal class. In 2011, a visa officer found that the marriage was genuine, but refused the application on the grounds of serious criminality. The Immigration Appeal Division (IAD) granted the appeal of that refusal and sent the application back for redetermination.

In 2013, a visa officer refused the Applicant's husband's application for permanent residence because he failed to submit documents that he was required to submit, in spite of the fact that the officer requested the documents on two occasions.

The Applicant appealed the refusal to the IAD. The IAD found that regardless of whether the marriage was genuine at the time they got married, it is not a genuine marriage today. The IAD therefore dismissed the appeal, and did not need to consider whether the officer's refusal was legally valid or whether there were sufficient humanitarian & compassionate grounds to grant the appeal.

(Respondent's Memorandum of Argument, paras. 2 to 5)

[3] It is not contested that, although the marriage was found to be genuine in 2011, on the appeal to the IAD to have the 2013 decision set aside, the IAD was required to determine whether the marriage was genuine at that point in time pursuant to s. 4(1)(1)(b) of the *Immigration and Refugee Protection Act*.

[4] In the IAD's evaluation of the evidence, a feature of concern was canvassed in depth. In 2012, the Applicant's husband left Canada for Trinidad and Tobago while the Applicant remained in Canada. Since their separation the couple have had no physical contact. The reasons provided to explain this situation included the Applicant's poor health, and insufficient financial resources. The IAD found that "it is possible that the appellant's claims about her health are the real reason for her inability to see her husband in the last six years, but that was not well established by the evidence" (Decision, para. 11).

[5] Indeed, there was also evidence before the IAD that, for a lengthy period, there had been no communication whatever between the couple. To address the IAD's concern on this issue, the Applicant presented evidence of contact in the form a "chat log" of recently exchanged text messages. In my opinion, the core reason for the IAD's rejection of the application for sponsorship was strong current evidence in the messages of a break-down of the marriage. The IAD expresses this point in the conclusion to the decision at paragraph 19:

When I consider all of the documentary and oral evidence together, it is more likely than not that the appellant's marriage to the applicant is not genuine. The evidence about the beginning and development of the relationship until marriage weighed positively, but the documentary evidence that she did produce of communication within the last year weighs heavily against genuineness, overall.

[6] In support of the conclusion expressed, the IAD provided the following explanation:

Those chat logs for August 2016 - April 2017 are not helpful to her case at all. Overall, they do not reflect communication or commitment that might reasonably be expected in a genuine marriage. So the fact that that was all she had to put forward in support of her appeal reflects poorly on the genuineness of the marriage. It is true that there is evidence of chatting about "phone sex" that they shared, and which the applicant testified about. But interspersed between forwarded stories, jokes, and scriptural verses was more personalized communication between the spouses that is rife with references about the applicant wanting to divorce the appellant (as of at least August 2016), wanting her to leave him a long time ago, and ongoing infidelity issues from both sides. The appellant was even "begging" (her words) the applicant to hold on until after "the interview" in August 2016. And four days after the first sitting of the IAD hearing, the applicant repeated his wish for her to leave him (found elsewhere in the chats) and referenced "an agreement" that if it did not work out at the tribunal, they would leave each other. The existence of such an agreement is inconsistent with a genuine marriage.

The appellant's counsel argued that the applicant's desire to break up the relationship undermines the idea that his primary purpose of entering the marriage was immigration. That is true. But it is also

true that these very same things weigh against finding that the marriage is genuine to the applicant. They do not reflect a "shared relationship of some permanence, interdependence, shared responsibilities and a serious commitment (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1490).

(Decision, paras. 13 and 14)

[Footnotes omitted] [Emphasis added]

[7] I find that the IAD's evaluation of the evidence and the conclusion reached that the marriage "is not genuine now" (Decision, para. 16) are well supported. As a result, I find that the decision under review is reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present Application is dismissed.
2. There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3220-17

STYLE OF CAUSE: ANGELA WEAVER-THOMAS v MINISTER OF
IMMIGRATION REFUGEE AND CITIZENSHIP
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 1, 2018

JUDGMENT AND REASONS: CAMPBELL J.

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