

Federal Court



Cour fédérale

Date: 20180727

Docket: IMM-4998-17

Citation: 2018 FC 788

Montréal, Quebec, July 27, 2018

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

LIDYA PASHANOV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada denying permanent residence to Mr. Yurii Dekhovenko (Yurii) based on sponsorship by the applicant, Lidya Pashanov (Lidya), as his conjugal partner. The decision was based on a conclusion that Lidya and Yurii were not in a conjugal relationship as required by s. 117 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

I. Applicant's Factual Allegations

[2] Yurii and Lidya were classmates in Nalchik, Russia in their youth, and were romantically involved. Lidya moved away to Israel in 1972, and Yurii to Ukraine in 1993. They have both been married before; Yurii was married in 1978 and divorced in 1993, while Lidya married twice, divorcing her first husband in 1982 in Israel, and her second in 2014 in Canada.

[3] Lidya and Yurii reconnected online in December 2013, and their old romantic feelings were re-ignited. They began communicating daily and continue to do so. Lidya transfers money to Yurii on a regular basis. The application to sponsor Yurii for permanent residence was filed on October 5, 2015. Lidya has several medical conditions which make travel nearly impossible. In May 2016, Lidya's son arranged for her to visit him in Israel for his birthday, as well as to attend medical appointments. As a surprise for Lidya, her son arranged for Yurii to be there, allowing them to meet in person for the first time since their youth.

[4] Days after this visit, Yurii was interviewed by a visa officer for the sponsorship application. An initial decision by that officer denying permanent residence led to an appeal *de novo* before the IAD.

II. The IAD's Decision

[5] Section 117 of the *IRPR* identifies a conjugal partner as a member of the family class who may act as a sponsor. The definition of "conjugal partner" requires that the sponsor be in a conjugal relationship with the person to be sponsored, and that they have been in that

relationship for at least one year. The IAD noted that the term “conjugal relationship” is not defined in the legislation, but that the Supreme Court of Canada provided the following non-exhaustive list of factors in *M v H*, [1999] 2 SCR 3 at para 59:

1. Shared shelter,
2. Sexual and personal behaviour,
3. Services,
4. Social activities,
5. Economic support,
6. Children, and
7. Societal perception of the couple.

[6] The IAD also noted that one must “use a flexible approach to determine whether a conjugal relationship exists, since relationships of couples vary and that the criteria used to assess the relationship needs [*sic*] to be modified for couples living in different countries”:
Leroux v Canada (Citizenship and Immigration), 2007 FC 403 [*Leroux*]. The Court in *Leroux* went on to state as follows at para 23: “Nevertheless, the alleged conjugal relationship must have a sufficient number of features of a marriage to show that it is more than just a means of entering Canada as a member of the family class.”

[7] The IAD indicated that the genesis and development of the relationship between Lidya and Yurii would be a useful consideration. The IAD noted their early romantic feelings, their lengthy separation, and their reconnection in December 2013, which resulted in beginning daily communications and transfers of money. The IAD noted that the relationship continued like this,

and Lidya and Yurii did not meet in person until May 2016. The IAD also noted that they shared no property and no bank accounts, and that Lidya had not named Yurii as beneficiary on her insurance.

[8] The IAD noted Lidya's explanation of health challenges which limited her ability to meet in person with Yurii. However, the IAD also noted that the medical evidence did not state that Lidya could not travel. Moreover, Lidya did indeed travel in May 2016. The IAD acknowledged that special arrangements were made for this travel, but found no reasonable explanation why similar arrangements could not have been made earlier and/or thereafter. The IAD also noted that when Lidya decided to travel to Israel, and being ignorant that her son had arranged for Yurii to be there, she apparently made no effort to have Yurii come to Israel to meet her. By this time, Yurii had been refused three times for a temporary resident visa to come to Canada, so it was not clear how else Lidya and Yurii might meet in person.

[9] Those refused visa applications (all filed in 2014) raised another concern of the IAD. None of them mentioned the alleged conjugal relationship with Lidya. In fact, Yurii identified himself as single in the applications. All of them mention a desire to come to Canada to visit his aunt and her family. An important concern for the IAD was that it turns out that that aunt is actually Lidya's mother. It should also be noted that the sponsorship application indicates explicitly that Yurii has no family members in Canada.

[10] The IAD was not satisfied by Yurii's explanation that Lidya was not yet divorced, and he did not wish to complicate the situation before the visa officer. The IAD also noted an

inconsistency between Yurii's alleged concern about Lidya's pending divorce, and his ignorance of the timing of the divorce, even its year.

[11] The IAD noted inconsistencies in the evidence concerning the development of the relationship between Yurii and Lidya, and when they became conjugal partners. The IAD asked why, if they were engaged in 2014 as they say, they did not marry when they were together in Israel in 2016. They answered that they are of different religions and such marriages are not permitted in Israel. The IAD was not satisfied by this explanation, citing a lack of supporting evidence. The IAD also found that Yurii's description of their relationship at the time he was seeking a temporary resident visa was at best boyfriend-girlfriend, not a conjugal relationship.

[12] The IAD discounted the evidence of the regular communications and money transfers between Lidya and Yurii, concluding that they could be explained by their family relationship rather than any conjugal relationship. The IAD also noted the dearth of evidence to support the reconnection in December 2013 between Lidya and Yurii. Moreover, the IAD was unsatisfied with the evidence concerning the development of the relationship thereafter.

III. Issues

[13] The applicant argues that:

1. The IAD ignored and misconstrued relevant evidence;
2. The IAD engaged in microscopic analysis of the testimony, speculation and conjecture;
3. The IAD incorrectly applied the factors used to assess a conjugal relationship; and
4. The applicant and Yurii were denied procedural fairness due to errors by the interpreter.

IV. Analysis

A. *Standard of Review*

[14] There does not appear to be any dispute that the standard of review on most issues is reasonableness: *Leroux* at para 16. The exception concerns the issue of procedural fairness, which is reviewed on a standard of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12.

B. *Failure to Consider Evidence*

[15] The applicant argues that the following important evidence was ignored by the IAD:

1. Lidya's medical history; and
2. Religious reasons that prevented Lidya and Yurii from marrying in Israel.

[16] With regard to Lidya's medical history, the applicant cites evidence of medical doctors concerning her conditions, as well as special arrangements that had to be made by her son so that she could travel to Israel. I am not convinced that the IAD ignored or misconstrued any of this evidence. It commented on this evidence, but concluded that it did not establish that she could not have travelled before or since travelling to Israel. In my view, this conclusion was reasonable.

[17] The IAD also considered the argument that Lidya and Yurii could not marry in Israel. Again, the IAD found the evidence insufficient to support this argument. In my view, this finding was likewise reasonable.

C. *Microscopic Analysis, Speculation and Conjecture*

[18] The applicant attacks the IAD's negative inference drawn from Yurii's ignorance of the date that Lidya's 2014 divorce was granted. The applicant criticises the IAD's conclusion that, if Lidya and Yurii were indeed in a conjugal relationship having daily communication over several years, they would have discussed the granting of her divorce, and therefore Yurii would have known in which year that happened. The applicant argues that it was unreasonable for the IAD to draw such a conclusion about the nature of the couple's conversations.

[19] In my view, it was reasonable for the IAD to draw the conclusion it did, since Yurii himself cited the pending divorce as a reason for not mentioning Lidya in his applications for temporary resident visas. There was ample reason for the IAD to expect that Yurii would have some knowledge of the date of Lidya's divorce.

D. *Factors Used to Assess a Conjugal Relationship*

[20] The parties agree on the list of relevant factors reproduced at para [5] above, as well as the need for a flexible approach where the couple lives in different countries.

[21] The applicant goes through the relevant factors and argues how they should weigh in favour of recognizing a conjugal relationship. However, these arguments amount to little more than seeking a reassessment of the factors that were already recognized and considered by the IAD. That is not the role of this Court. The applicant points to little that was not explicitly considered by the IAD, and nothing that appears to have been overlooked.

[22] In my view, the evidence supports the IAD's conclusion that Lidya and Yurii were not in a conjugal relationship for at least one year prior to the filing of the sponsorship application in October 2015. The IAD was reasonable in expecting evidence concerning the development of the relationship from December 2013, when the couple allegedly reconnected, until October 2014, which was one year before the sponsorship application was filed. The IAD was also reasonable in concluding that the evidence in this regard was insufficient. Moreover, because of the inconsistencies noted above, the IAD had ample reasons to give little weight to testimony from the couple.

E. *Issue with Interpreter*

[23] The applicant argues that the IAD found inconsistencies in the evidence concerning how Lidya and Yurii reconnected because of errors by the interpreter. The argument that the IAD's decision should be set aside for this reason was not well-developed, either in writing or orally.

[24] I dispose of this argument on the basis that the IAD's comments that were allegedly caused by erroneous interpretation were made only after it had already noted the absence of evidence of the purported Skype communications between the couple early on. I conclude that

any findings of inconsistencies of the nature raised here were subsidiary. I note also that the IAD was aware of challenges involving the interpreter. I am not convinced that any such challenges or errors of interpretation had a substantial effect on the result of the IAD's decision.

V. Conclusions

[25] For the foregoing reasons, the present application should be dismissed.

[26] The parties are agreed that there is no serious question of general importance to certify.

JUDGMENT in IMM-4998-17

THIS COURT'S JUDGMENT is that:

1. The present application is dismissed.
2. No question is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: LIDYA PASHANOV v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 18, 2018

JUDGMENT AND REASONS: LOCKE J.

DATED: JULY 27, 2018

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