Federal Court  Cour fédérale

Date: 20191016

Docket: IMM-2231-18

Citation: 2019 FC 1299

Ottawa, Ontario, October 16, 2019

PRESENT: Mr. Justice Pentney

BETWEEN:

RUPINDER KAUR MANGAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Rupinder Kaur Mangat seeks judicial review of the decision of the Immigration Appeal Division (IAD) dated April 20, 2018, dismissing her sponsorship appeal. The IAD found that she had previously obtained her permanent residence status through misrepresentation. She claimed to have been single when she came to Canada, but the IAD found that she had been married.

[2] Related to this, the Applicant also challenges the preliminary ruling of the IAD dated June 1, 2016, which found that the doctrine of *res judicata* should not be applied to bar an inquiry into the merits of the appeal.

[3] The Applicant claims that the IAD made two key errors: (i) it failed to apply the doctrine of *res judicata* properly, and thus did not give effect to an earlier decision of the Immigration Division of the Immigration and Refugee Board of Canada (the Immigration Division) which had found that the Applicant was not married, and (ii) its interpretation of the new evidence on the question of when she was married was unreasonable.

II. Background and Procedural History

[4] Prior to her arrival in Canada in July 2004 to work as a live-in caregiver, the Applicant lived in India. On March 5, 2007, she applied for permanent residence in Canada. On her application form, she declared that she was not married. In August 2007, an immigration officer prepared a report under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] (the subsection 44(1) Report), alleging that the Applicant had failed to disclose that she was married to Rajinder Singh Mangat in March 2003. It was alleged that she had made a material misrepresentation that could have induced an error in the administration of the Act, contrary to paragraph 40(1)(a) of *IRPA*.

[5] A hearing into this allegation was convened on February 18, 2009. Following its review of the evidence and submissions of the parties, the Immigration Division ruled that the Minister had not established misrepresentation on a balance of probabilities, and therefore rejected the

subsection 44(1) Report. The Minister did not appeal or otherwise challenge this decision. On March 24, 2010, the Applicant was granted permanent residence in Canada.

[6] On August 24, 2010, the Applicant applied to sponsor Rajinder Singh Mangat for permanent residence, claiming that she had married him on May 28, 2010. Her sponsorship application was refused on the basis that the Applicant had previously misrepresented her marital status, contrary to paragraph 40(1)(a) of *IRPA*, because she had failed to declare her spouse when she applied for permanent residence in March 2007, contrary to paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *Regulations*].

[7] The Applicant appealed this refusal to the IAD and brought a preliminary motion, arguing that the doctrine of *res judicata* should be applied and asking the IAD to find that the Respondent was bound by the prior decision of the Immigration Division. It was agreed that this preliminary motion would be dealt with in writing. On June 1, 2016, the IAD member ruled that the appeal was not barred by the application of the doctrine of *res judicata*. The IAD found that the doctrine did not apply to prevent the IAD from hearing the appeal, both because the pre-conditions to the application of the issue estoppel branch of *res judicata* were not met, and because the fresh evidence produced by the Minister was a special circumstance that meant that the doctrine ought not to be applied. This ruling is explored in more detail in the analysis below.

[8] The Applicant sought judicial review of the IAD decision on the *res judicata* issue. On December 1, 2016, Justice Susan Elliott of this Court dismissed the application on the basis that it was premature, but “without prejudice to the Applicant bringing the same arguments at any

future judicial review after the IAD renders a final determination" (*Mangat v Canada (Citizenship and Immigration)*, 2016 FC 1336 at para 17).

[9] The IAD held a hearing on the merits of the appeal on November 27, 2017, and released its decision dismissing the appeal on April 20, 2018. The IAD noted that "[t]he evidence in this appeal is far from perfect on both sides." Nevertheless, it was persuaded that the new evidence introduced by the Minister was sufficient to establish, on a balance of probabilities, that the Applicant had been married in 2003. The IAD noted that neither the Applicant nor her husband testified at the hearing before it, and thus many of the questions that arose from the evidence remained unanswered. The member found that the Applicant had failed to declare her spouse when she first applied for permanent residence, and therefore had contravened paragraph 117(9)(d) of the *Regulations*. It had been agreed by the parties that this finding would be determinative of the misrepresentation issue as they relied on the same facts. The IAD therefore dismissed the appeal. This ruling is also reviewed in more detail below.

[10] This application for judicial review concerns the two decisions of the IAD.

III. Issues and Standard of Review

[11] There are two issues raised in this case:

A. Did the IAD err in finding that *res judicata* should not be applied?

B. Was the IAD's assessment of the new evidence reasonable?

[12] The Applicant argued that the standard of review for both issues is correctness, citing *Rahman v Canada (Citizenship and Immigration)*, 2006 FC 1321 [*Rahman*]. The Applicant

submits that whether the preconditions for the application of *res judicata* have been met is a question of law which affects an applicant's rights, and the IAD has no greater expertise in applying the doctrine than the Court. In this case, the matter was dealt with as a preliminary motion in writing, and so the IAD did not have the advantage of observing witnesses in person. Therefore, the standard of correctness should apply to both issues.

[13] I disagree. I find that the decision in *Rahman* does not reflect the developments in the jurisprudence, both in regard to *res judicata* in the immigration context and, more generally, in regard to standard of review. I would adopt the analysis on this question in *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 157 [*Dhaliwal*]). The standard of review is reasonableness in regard to whether the preconditions for the application of issue estoppel (the branch of the *res judicata* doctrine that applies here) are met, as well as the application of the doctrine to the facts.

[14] This is also consistent with the more general developments in relation to standard of review analysis (see, for example: *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 [*Canada (CHRC)*]; *Nor-man Regional Health Authority Inc v Manitoba Association of Health Care Professionals*, 2011 SCC 59 at paras 35-39; *West Fraser Mills Ltd v BC (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para 8).

[15] The standard of review of the IAD's assessment of the new evidence is reasonableness, insofar as that determination was core to its decision to find the Applicant inadmissible for misrepresentation (*Patel v Canada (Citizenship and Immigration)*, 2019 FC 422 at para 19).

IV. Analysis

A. *Did the IAD err in finding that res judicata should not be applied?*

[16] The Applicant argues that in the preliminary motion decision the IAD erred in its application of the test for issue estoppel, which is the branch of *res judicata* that applies here. Issue estoppel prevents the re-litigation of the material facts and conclusions of law or mixed fact and law that were necessarily determined in an earlier proceeding. Where the same issue is being re-litigated by the government against an individual, the principles underlying issue estoppel should be applied with even greater force.

[17] In this case, the Applicant submits that the IAD was wrong not to find that all three of the pre-conditions to the application of issue estoppel had been met (*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 25 [*Danyluk*]). First, the same issue – whether the Applicant was married in 2003 – had been previously decided by the Immigration Division in its earlier decision. Second, that decision became "final" when the Minister chose not to appeal it. Third, the same parties were involved in both proceedings. The Applicant contends that the IAD erred in its application of the test, and therefore the second hearing before the IAD should never have proceeded. On this basis, the Applicant contends that both IAD decisions should be overturned.

[18] The Respondent submits that even if the pre-conditions had been met, there is a residual discretion to not apply the doctrine where it is in the interests of justice to deal with the matter on its merits (*Penner v Niagara (Regional Police Services Board)*, 2013 SCC 19 at paras 29-31 [*Penner*]). The Respondent contends that this is such a case, in light of the significant new

evidence about the timing of the marriage that was put before the IAD in the most recent hearing. The jurisprudence has established that the IAD is required to consider the new evidence that is produced before determining whether the appeal should be barred by issue estoppel, and that is what was done here (*Kular v Canada (Citizenship and Immigration*), Court File No IMM-4990-99, 2000 CanLII 16016 (FC); *Sekhon v Canada (Citizenship and Immigration)*, 2001 FCT 1354).

[19] The parties focus their attention on different aspects of the decision-making process. The Applicant says that the IAD decision on the preliminary motion is wrong because it is based on a fundamental misunderstanding of the test. The Respondent argues that the focus should be on the outcome of the second decision – on the merits of the claim; it argues this decision is reasonable because it reflects the emphasis in more recent decisions on the question of whether the application of the doctrine of issue estoppel would result in an injustice, and it considers the claim in light of the new evidence.

[20] I agree with the Applicant that the IAD's statement of the legal test in regard to issue estoppel is inaccurate. I am not persuaded, however, that this resulted in a fatal error because I find that the IAD ultimately applied the proper doctrine to the facts of the case, and that the outcome is, in the end, a reasonable one. This may seem to be a surprising outcome, but as I explain below, it is consistent with the specific reasons given by the IAD, when viewed in the manner required by the reasonableness standard of review. It is also consistent with the recent *Dhaliwal* decision of this Court, which deals with somewhat similar facts, and which was relied on by both parties in this proceeding.

[21] The essence of the issue estoppel argument advanced by the Applicant is that the Minister and the IAD were bound by the prior determination of the Immigration Division that the Applicant was not married. That decision became final and binding because the Minister chose not to appeal it, and neither the immigration officer considering her sponsorship application nor the IAD hearing the appeal could re-open it. The Minister brought the original challenge and had the obligation to "put its best foot forward" by leading all of the evidence that was available or could reasonably have been obtained. The Immigration Division considered the matter after a full hearing and decided in favour of the Applicant. The Minister chose not to appeal. As a matter of fairness, and in the interests of finality, the Applicant was entitled to rely on that decision.

[22] The IAD decision on the Applicant's preliminary motion begins by citing the law as set out by Justice Binnie in *Danyluk*, noting the three pre-conditions to the application of issue estoppel as well as the emphasis on the need to avoid a mechanical application of the doctrine. As the IAD correctly noted, Binnie J. set out a two-step process: the first is to determine whether the pre-conditions to the application of issue estoppel apply; the second is to determine whether issue estoppel ought to apply and, in particular, whether its application would work an injustice. This is an accurate statement of the law (*Penner*, at para 93; *Danyluk*, at para 80).

[23] However, the IAD then finds that the pre-conditions are not met in this case because the appeal by the Applicant "has not been previously decided by the IAD on the same set of facts and grounds of inadmissibility. The favourable decision of the [Immigration Division] does not remotely indicate that the exact same evidence was before the visa officer when he refused to [approve the sponsorship application]" (at para 10). I agree with the Applicant that this is an

incorrect statement of the test, insofar as it limits the application of issue estoppel to cases in which the same issue was determined on the basis of the same evidence. That is simply wrong – issue estoppel is triggered when the same issue is being re-litigated, whether or not the same facts are before the decision-maker. The new evidence may be relevant at the second step of the analysis, but the reference cited above is contained in the IAD's analysis of whether the pre-conditions are met – that is, at the stage one analysis.

[24] I also agree with the Applicant that the IAD erred in finding that issue estoppel could not apply to prevent the IAD, as an appellate body, from considering a matter that had previously been determined by the Immigration Division, as a first-level decision-maker. This is also an inaccurate statement of the law. Where issue estoppel applies, it prevents a subsequent decision-maker, at whatever level, from re-considering the issue. (Donald J Lange, *The Doctrine of Res Judicata in Canada*, 4th ed (Markham (ON): Lexis Nexis, 2015) at 1-4, 27.)

[25] However, I do not find that these constitute reversible errors because the IAD continued with its analysis, and I find that it properly considered the second stage of the process, which involves the question of whether issue estoppel ought to be applied. The panel correctly stated and applied this element of the test:

> 14. The issue of whether *res judicata* ought to be applied in any given case is within the IAD's discretion to determine, subject to any special circumstances that would bring the appeal within the exception to the doctrine. The exception of special circumstances includes decisive, fresh evidence that could not have been discovered by the exercise of reasonable diligence in the first proceeding. The existence of decisive new evidence is a valid basis for refusing to apply the doctrine of *res judicata*. Decisive new evidence has been described as evidence "demonstrably capable of altering the result of the first proceeding [citations omitted].

[26] The IAD then concludes, "[t]hus, based on all the evidence available, the doctrine of *res judicata* ought not to be applied" (at para 17). This conclusion is reasonable, in the circumstances of this case, and I find there is no basis to overturn this aspect of the decision simply because of an earlier mis-statement of the law on the pre-conditions to issue estoppel. To reverse the decision on this basis would be inconsistent with the clear and binding authority that judicial review is not to be a "treasure hunt for error", and that the reasons are to be read as an organic whole, in light of the record, to determine whether the outcome falls within a range of possible outcomes in light of the facts and the law (see *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14).

[27] It is important to recall that the IAD was making a decision on a preliminary motion brought by the Applicant, which asked for a determination whether the Minister and the IAD were bound by the former decision because the doctrine of issue estoppel applied. The IAD was not determining the case on its merits, but rather dealing with a preliminary motion, in writing. Based on its consideration of the applicable case law, and the facts before it, the IAD determined that *res judicata* ought not to be applied at that stage of the proceeding, to bar any further inquiry into whether the Applicant had previously been married. It found that there was potentially "decisive" new evidence on the question, which led to the conclusion that the doctrine ought not to be applied.

[28] The IAD found that the new evidence produced by the Respondent could be found to be "demonstrably capable of altering the result in the first proceeding" (at para 14, citing *Lundrigan*

Group Ltd v Pilgrim (1989), 75 Nfld & PEIR 217, (1989) CanLII 3952 (Nfld CA) at 223). This was a reasonable conclusion in regard to the preliminary motion, and is consistent with the jurisprudence of this Court (see *Vo v Canada (Citizenship and Immigration)*, 2018 FC 230 at para 27, citing *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 [*CUPE*], and *Ping v Canada (Citizenship and Immigration)*, 2013 FC 1121).

[29] It should also be noted that the ruling on the preliminary motion to the effect that *res judicata* ought not to be applied to bar the hearing on the merits did not preclude an argument by the Applicant at that subsequent hearing to the effect that the new evidence did not meet the stringent test established by the jurisprudence. Nor did the ruling of Elliott J. on the judicial review of the preliminary decision. The Applicant decided to bring the question as a preliminary motion and did not succeed in persuading the IAD member making a determination on the motion that issue estoppel barred the matter from proceeding. The question of whether the new evidence met the test set out in the jurisprudence was apparently not raised before the IAD during the hearing on the merits.

[30] This outcome is also congruent with the *Dhaliwal* decision, which both parties cited as a leading authority on the question of *res judicata* in the immigration context. That case also involved a question of whether the applicant had misrepresented her marital status. The applicant had married a Canadian citizen, who then submitted a sponsorship application for her. This was refused because the visa officer was not satisfied that the marriage was genuine. On consent of the Minister, the decision was overturned by the IAD and the Applicant became a permanent resident of Canada in July 2003. About one month later, the applicant’s husband applied for a

divorce in the British Columbia Supreme Court, claiming that he and the applicant had been separated since February 2001. The marriage was dissolved in November 2003.

[31] The applicant then married Navdeep Singh and applied to sponsor him for permanent residence. On the sponsorship forms, she declared that she had separated from her former husband in January 2004. Following a review of her file, an immigration officer found that she had entered into her first marriage only for the purpose of gaining entry into Canada and she was therefore directed to an inadmissibility hearing for misrepresentation, contrary to paragraph 40(1)(a) of *IRPA*.

[32] The Immigration Division held a hearing into the matter, and concluded that she had made a material misrepresentation about her first marriage. It issued an exclusion order against the applicant. She appealed to the IAD and brought preliminary motions, arguing that the Minister was estopped from questioning the genuineness of her first marriage and that the quality of the interpretation at the hearing was faulty. Only the issue estoppel issue is relevant here.

[33] The IAD found that issue estoppel did not preclude any questions about the genuineness of her first marriage. It found that the two hearings dealt with separate, but related issues: the first concerned whether the marriage was genuine, while the second dealt with whether the applicant had misrepresented that it was genuine. Further, the IAD found that the parties were not the same in the two proceedings: the first was between her sponsor (her first husband) and the Minister of Citizenship and Immigration, while the second involved the applicant and the Minister of Public Safety and Emergency Preparedness. Finally, the IAD concluded that the strict application of issue estoppel would undermine Parliament’s intent relating to section 40 of

IRPA if a previous finding that a marriage was likely genuine precluded a subsequent inquiry into whether there had been material misrepresentation.

[34] The applicant sought judicial review of this decision. In relation to the issue estoppel finding, Justice Keith Boswell began with a review of the applicable law and then turned to an analysis of the decision. Justice Boswell found the IAD's conclusion that the issues in the two proceedings were different was unreasonable because the misrepresentation hearing required an assessment of the genuineness of the marriage; thus, the dispositive issue in the later hearing was the same one that was determined in the first (at paras 40-42, citing *Ramkissoon v Canada (Citizenship and Immigration)*, [2000] FCJ No 971 (QL) at para 8, 6 Imm LR (3d) 223 (TD)).

[35] Second, Boswell J. found that the IAD's conclusion that the parties were not the same was in error, because it did not consider whether the applicant was nonetheless privy to the earlier decision. He found that because the sponsor (the first husband) was the only party allowed to appeal the first decision, and it directly affected the applicant, it was unreasonable to conclude that she was not privy to the first decision. Furthermore, the relationship between the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness was intertwined in regard to the administration of *IRPA*, and thus it was unreasonable to view them as unrelated parties.

[36] Despite these findings, however, Boswell J. concluded that the IAD decision was reasonable when looked at as a whole. His reasons for this conclusion are set out in the following paragraphs:

> [51] The IAD probably would have exercised its discretion to hear the case against the Applicant even if it had been satisfied that the pre-conditions to issue estoppel were met. At paragraph 28 of its decision, the IAD said that it would undermine the Parliamentary intent underlying section 40 of the *Act* to "hold that a previous IAD decision that a marriage is likely genuine is binding on future panels that are required under the [*Act*] to assess whether there was a material misrepresentation under section 40."
>
> [52] That is a reasonable conclusion. A material misrepresentation is one that "induces or could induce an error in the administration of this Act" (*Act*, s 40(1)(a)). This expressly recognizes that the misrepresentation could have already induced an error in the administration of the *Act*, and the IAD should not be precluded from exploring this possibility only because it was the IAD itself that was allegedly induced into error.
>
> [53] Moreover, even the Applicant recognized at paragraphs 24 to 26 of her reply memorandum that significant new evidence could reasonably justify a decision not to apply issue estoppel. The IAD had evidence before it that the Applicant's sponsor divorced her just one month after her arrival in Canada, with a separation date well before when she obtained permanent residence, and the Applicant's sponsor specifically advised CIC that the Applicant only married him to get into Canada. Although the IAD never expressly considered its discretion to not apply issue estoppel, it is readily apparent that it would have decided to hear the case against the Applicant even had it been convinced that the pre-conditions were met.
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> (Emphasis in original.)

[37] To summarize, in *Dhaliwal*, Boswell J. found the decision of the IAD on the elements of the first stage of the issue estoppel test to be unreasonable, but he ultimately upheld the decision because he concluded that the IAD would have applied the exception at the second stage of the test on the basis that significant new evidence had emerged and in view of the nature of the statutory scheme and the different inquiries required at different stages of the immigration process.

[38] The Applicant argued that this conclusion had no application to the case before me. I disagree. I find that this decision offers helpful guidance on the application of the doctrine of issue estoppel and on the proper approach to judicial review of an IAD decision on this question.

[39] In considering this question, the starting point is that the common law doctrine of *res judicata*, and in particular the issue estoppel branch of that doctrine, has been applied to administrative proceedings, but the jurisprudence has consistently stated that the doctrine should be adapted to reflect the particular circumstances of the administrative process. As stated in *Danyluk* at paragraph 21, and cited with approval in *Penner* at paragraph 94, "[in the administrative law] context, the more specific objective is to balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided."

[40] The question has arisen in a wide variety of different circumstances, often involving the interaction of the administrative law and common (or civil) or criminal law systems. Thus, a ruling by an Employment Standards Officer on whether unpaid commissions were owed to the former employee was not found to preclude consideration of the same issue by a common law court considering a wrongful dismissal claim (*Danyluk*). Conversely, a final determination by a criminal court could not be re-examined by a labour arbitrator operating under a collective agreement (*CUPE*). The application of both stages of the test, but in particular the consideration of the second stage (whether issue estoppel ought to be applied), was considered in light of the nature of the administrative law scheme, viewed in the context of the purpose of the statute, the interests of the parties, and the overall interest in finality of legal proceedings (*Danyluk* at paras 68-80; *Penner* at paras 36-48). The touchstone is fairness.

[41] In this case, the relevant considerations include the nature and purpose of the legislative scheme, the obligations on both the Applicant and her first husband, as well as the Respondent in relation to that scheme, and the need to balance the Applicant's interests in finality with the Minister's ongoing obligations to administer the legislative regime. The jurisprudence establishes that seeking to maintain public confidence in the administration of *IRPA* is an important goal, which is necessary to give proper effect to the objectives of the Act set out in section 3. One of the ways this is done is through the "strict" interpretation of the misrepresentation provisions set out in section 40; another is the recognition and enforcement of the requirements on applicants to make full, complete, and ongoing disclosure, often referred to as the "duty of candour" (see *Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169).

[42] In relation to the facts of this case, it is relevant that the two inquiries done by the Immigration Division and the IAD related to different applications submitted at different times by the Applicant, seeking different immigration outcomes, and based on different provisions. The application of issue estoppel in relation to a statutory scheme that will often include a series of stages and different applications must take this reality into account. As noted by Boswell J., the "material misrepresentation" provisions apply to statements that could induce errors in processing a claim in the future and those which have already occurred but have only recently come to light. The obligations on an applicant seeking an immigration status from Canada are ongoing, and when new evidence emerges that could support a finding that a misrepresentation had occurred at a prior stage, it is not unreasonable to consider this in deciding whether issue estoppel should prevent any review of the previous finding. I find this is consistent with the legislative intent reflected in *IPRA* and with the reasonable expectations of applicants for immigration status.

[43] One final consideration in this case is that it is clear that if the question of issue estoppel had been raised at the hearing on the merits, the IAD would have concluded that the new evidence was sufficient to bring the case within the exception, in particular given that the Applicant and her husband did not testify. In this respect, this case is similar to *Dhaliwal* and I find that the same reasoning should apply here.

[44] For these reasons, I find the IAD decision on the question of issue estoppel, viewed as a whole and considered in light of the record, to be reasonable.

B. *Was the IAD's assessment of the new evidence reasonable?*

[45] The Applicant's challenge to the reasonableness of the IAD decision on the merits focuses on two elements: (1) the weight given by the IAD to a letter purportedly written to the Applicant by her husband in October 2004, and (2) the importance the IAD accorded to the results of a field investigation undertaken by a visa officer.

(1) The letter from her husband

[46] The IAD reviewed the October 2004 letter in some detail, noting that it had been in evidence before the Immigration Division in the prior hearing and that the Applicant had testified before the Immigration Division that she never received this letter and she did not recognize the handwriting. The Applicant had suggested that this letter had been provided to the Canada Border Services Agency (CBSA) by "somebody who wants to put me in trouble." The IAD found that the letter was sent to an address that the Applicant had lived at while in Canada. It also noted that the evidence showed that the Applicant was a "woman who has many addresses" (at para 14).

[47] There were discrepancies between CBSA, income tax, and phone records regarding where the Applicant lived and for whom she worked at various times. The IAD found that the address to which the letter was sent was not random, and it did not accept the Applicant's argument that she did not live at that address at the time the letter was supposedly sent. The member notes that, in the absence of any explanation by the Applicant regarding these many discrepancies, it did not accept her arguments. The IAD concluded that the letter appeared to be a genuine expression of regret by her first husband that she had left India so soon after they were married. The IAD found that this bolstered the conclusion that the Applicant had been married in 2003.

[48] It should be noted here that the IAD drew a strong negative inference against the Applicant and her second husband because they did not provide testimony at the hearing before it. The IAD relied on a decision of this Court, *Ma v Canada (Citizenship and Immigration)*, 2010 FC 509, which states at paragraph 2: "…nevertheless, when evidence is available, or could be made available but not produced, or when a person can testify, is given the opportunity to testify, but does not testify, then an adverse inference can be drawn."

[49] The Applicant submits that the IAD gave unreasonable weight to this letter, noting: (i) it was a handwritten letter with no authentication; (ii) it had been provided to the CBSA by an unknown person; (iii) there was no indication it was actually written by the Applicant's husband; and (iv) the evidence in the record showed that the Applicant had not been living at the address to which it was sent. The Applicant argues that the central issue for the letter is whether the Applicant was living at the address to which it was sent, and absent evidence to that effect, the

letter should not have been given any weight. In light of this, it was unreasonable for the IAD to rely on this letter.

[50] I am not persuaded. The IAD was alive to the difficulties with the letter. Indeed, the IAD expressed concern about the evidence submitted by the Respondent in the appeal. Furthermore, it was not necessary for the IAD to determine whether the Applicant actually received the letter in order to find that it was a genuine letter from a husband to his wife. That is what the IAD concluded and there is no basis to disturb this finding. The Applicant is, in essence, asking me to re-weigh the evidence submitted to the IAD, and that is not my role in judicial review absent some fundamental flaw in the way the decision-maker considered it (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64; *Canada (CHRC)* at para 55).

[51] Here, the IAD considered the letter as one of several pieces of evidence that, considered together, supported its conclusion that the Applicant had been married in 2003. The other evidence included a wedding programme that included the details one would expect for a wedding, and a completed "RSVP card" showing names of family members who accepted the invitation to attend. It also included evidence from the field investigation, discussed below, as well as records from a school, which indicated that a "Mrs. Rupinder Kaur Mangat" had worked there in 2003.

[52] I am unable to find the IAD's assessment of the letter unreasonable. It considered the totality of the evidence, noted the absence of any answer by the Applicant to the many questions that arose from the evidence, and concluded that the letter was genuine and that it helped to establish that the marriage occurred in 2003. This was a reasonable conclusion.

(2) The field investigation

[53] The Applicant submits that the IAD erred in giving weight to the new evidence on the results of a field investigation undertaken by an immigration officer in February 2012.

[54] This evidence consisted of the officer's report on his visit to the husband's village and his interviews with several villagers as well as the husband's father. The villagers all knew the husband and said that he had been married "five or six years ago." They also knew the Applicant and that she had been pregnant when she had last visited the village. The IAD concluded that this bolstered the conclusion that the Applicant had been married in 2003. The villagers knew her and her husband; they all placed the wedding ceremony at the location at which it was said to have occurred (for example, in the wedding invitation); they all said it was five or six years ago. The IAD found that the discrepancy in dates was understandable, in that a person would be more likely to remember the precise location at which a wedding was held, as opposed to the precise year.

[55] The Applicant argues that the IAD's interpretation of this evidence, and the weight given to it, is unreasonable. For example, the statements that the wedding happened five or six years prior to an interview held in 2012 would place the event in 2007 or 2008. None of the villagers said it happened nine or ten years ago, yet the IAD accepts that it supports the conclusion that the wedding was held in 2003. Similarly, the IAD accepts the statements as to the location of the wedding, while ignoring the Applicant's evidence that the place referred to by the villagers is where her engagement ceremony happened. Finally, the Applicant submits that the evidence from the field investigation should be discounted because it rested on the statutory declarations

from the villagers, which were prepared by the officer and reflect his unilateral and subjective summary of the actual statements, which may not have captured the nuance or details of the conversation. The Applicant contends that the IAD erred in placing significant weight on such conflicting and contradictory evidence.

[56] I do not agree. The evidence from the field investigation is objective, in the sense that it is provided by an officer with no "stake" in the outcome of the proceeding, and reflects the statements given by villagers who also had no interest in the outcome. The evidence of the Applicant's father-in-law, who presumably had some interest in the outcome, was essentially identical to that of the villagers. The IAD considered the details of the evidence, the context in which it was given, and the relevance of the statements to the issue before it and concluded that it would give significant weight to this evidence. It is not the role of a reviewing court to re-weigh that evidence, absent a substantial error by the decision-maker. I can find no such error here.

[57] For these reasons, I find the IAD's assessment of the evidence from the field investigation to be reasonable, considered in light of the record as a whole.

V. Conclusion

[58] For these reasons, I am dismissing this application for judicial review. No question of general importance was proposed by the parties, and none arises in this case.

JUDGMENT in IMM-2231-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	OCTOBER 16, 2019

APPEARANCES:

Shoshana T. Green Aris Daghigian	FOR THE APPLICANT
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