

Federal Court



Cour fédérale

Date: 20191127

Docket: IMM-2579-19

Citation: 2019 FC 1521

Toronto, Ontario, November 27, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

HAMID SHEIKH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Hamid Sheikh (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”), dated March 22, 2019. In that decision, the IAD dismissed the appeal from the decision of a Visa Officer at the High Commission of Canada in London, United Kingdom, denying the Applicant’s application to sponsor his spouse for admission to Canada as a permanent resident.

[2] The Applicant was born in Pakistan. He came to Canada in 1982 and subsequently obtained Canadian citizenship. He worked for a number of years in Canada before becoming disabled. He receives income support pursuant to the Ontario Disability Support Program. He lives in subsidized house and his only income is the support he receives from the Ontario government.

[3] In February 2014, the Applicant married Ms. Mushtaq in Pakistan. Ms. Mushtaq is the mother of a son who is now 10 years old.

[4] In June 2015, Ms. Mushtaq applied for permanent residence in Canada, together with her son, as a member of the family class. The Applicant was the sponsor.

[5] The application was refused on the grounds that the Visa Officer was not satisfied that Ms. Mushtaq met the requirements of the family class nor that the marriage was genuine. The negative decision was communicated to Ms. Mushtaq by letter dated December 28, 2016.

[6] The Applicant appealed, pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The hearing before the IAD began on August 20, 2018. In the course of the hearing on that date, counsel for the Minister of Citizenship and Immigration (the "Respondent") raised the issue of financial admissibility, as set out in section 39 of the Act.

[7] The IAD explained this issue to the Applicant and adjourned the hearing to allow him time gather the evidence necessary to address this issue.

[8] The hearing resumed on February 21, 2019. The Applicant called his niece and nephew as witnesses, as well as a person who indicated his willingness to offer a job to Ms. Mushtaq if she were allowed to come to Canada.

[9] In its decision, the IAD determined that the marriage of the Applicant and Ms. Mushtaq is genuine. It considered humanitarian and compassionate factors, pursuant to subsection 25(1) of the Act, relative to the Applicant's stepson who is a minor and with respect to the personal circumstances of the Applicant and of his spouse. However, it concluded that the humanitarian and compassionate factors did not overcome the inadmissibility of Ms. Mushtaq on financial grounds.

[10] The Applicant submits that the IAD breached procedural fairness by failing to give notice about the type of evidence that would be required from his family members in order to show that there would be sufficient moneys available for the support of his spouse.

[11] The Applicant also argues that the decision of the IAD is unreasonable and was made without consideration of the evidence, in particular the evidence of financial support from his niece and nephew and the offer of a job for his spouse.

[12] The Respondent submits that the decision of the IAD was made without breach of procedural fairness and was reasonable.

[13] The issue of an alleged breach of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[14] The substance of the decision of the IAD, involving a question of mixed fact and law, is reviewable on the standard of reasonableness; see the decision in *Delisa v. Canada (Citizenship and Immigration)*, 2010 FC 88.

[15] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[16] Upon reviewing the transcript of the hearing, I note the observations of the IAD at the end of the first hearing day, following the introduction of the issue of financial resources by the Respondent. The IAD clearly advised the Applicant of the nature and kind of evidence that he should introduce to respond to that issue. I see no breach of procedural fairness in this regard.

[17] The evidence of the niece and nephew and of the family friend, introduced on the second day of the hearing, was considered by the IAD.

[18] The IAD found that the evidence was insufficient to overcome the limitations set out in section 39 of the Act, which provides as follows:

Financial Reasons

39 A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made.

Motifs Financiers

39 Emporte interdiction de territoire pour motifs financiers l'incapacité de l'étranger ou son absence de volonté de subvenir, tant actuellement que pour l'avenir, à ses propres besoins et à ceux des personnes à sa charge, ainsi que son défaut de convaincre l'agent que les dispositions nécessaires — autres que le recours à l'aide sociale — ont été prises pour couvrir leurs besoins et les siens.

[19] The Applicant provided evidence that he is not employed and that he is in receipt of social assistance benefits, including subsidized housing.

[20] The conclusion of the IAD about the inadmissibility of the Applicant's spouse is supported by the evidence and there is no basis for judicial intervention.

[21] In the result, the application for judicial review is dismissed.

[22] There is no question for certification arising.

JUDGMENT in IMM-2579-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2579-19

STYLE OF CAUSE: HAMID SHEIKH v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 25 , 2019

JUDGMENT AND REASONS: HENEGHAN J.

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APPEARANCES:

Asaf Rashid FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor FOR THE APPLICANT
Asaf Rashid Law

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario