

Federal Court



Cour fédérale

Date: 20191205

Docket: IMM-2645-19

Citation: 2019 FC 1562

Ottawa, Ontario, December 5, 2019

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

RAMANDEEP KAUR TOOR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review by Ramandeep Kaur Toor seeking to set aside a decision of the Immigration Appeal Division of the Immigration and Refugee Board (IAD) upholding a visa officer's (Officer) decision that her marriage to Harpinder Singh Chahal was not genuine. The effect of this decision is that Mr. Chahal is ineligible to be sponsored by Ms. Toor as a member of the family class.

I. Background

[2] Ms. Toor and Mr. Chahal entered into an arranged marriage in India on November 18, 2013. Ms. Toor had earlier been briefly married to a Canadian resident on the strength of which she acquired Canadian permanent residency. She separated from her first husband about six months after arriving in Canada, and her divorce was finalized on July 29, 2013.

[3] It appears that Ms. Toor and Mr. Chahal first began to communicate in June, 2013. She flew to India six months later, and they first met in person on November 13, 2013. They formalized their engagement after three days, and were married two days later. They remained together in India for about one month, after which Ms. Toor returned to Canada. At that point, Ms. Toor was ineligible to sponsor Mr. Chahal, and it was necessary to wait until January, 2016 to bring the necessary application. In the result, Mr. Chahal remained in India.

[4] Mr. Chahal was interviewed by the Officer in New Delhi on December 12, 2016. The interview notes disclose a number of credibility concerns that led to a finding that Mr. Chahal's evidence was contrived and that the marriage was not genuine. Those concerns included the following:

- (a) The Officer found Mr. Chahal's explanation for Ms. Toor not returning to India until November, 2015 (a lost passport that was only later found) to be "very unusual";
- (b) Mr. Chahal was unaware of Ms. Toor's place of declared employment;
- (c) Mr. Chahal was unaware of Ms. Toor's criminal history in Canada;

- (d) Mr. Chahal professed to follow cultural norms with respect to not having a honeymoon, but, contrary to custom, married Ms. Toor, who was a divorcée;
- (e) The wedding photos appeared staged and unnatural, with guests not properly attired for the occasion;
- (f) The parties had presented very limited evidence of ongoing communication;
- (g) The marriage was carried out in haste, despite Ms. Toor's earlier failed relationship and the expectation that she would be more cautious the second time.

[5] Ms. Toor appealed the Officer's refusal of a visa to the IAD. That hearing proceeded on February 22, 2019, during which Ms. Toor and Mr. Chahal (by telephone) testified. The IAD found significant "irreconcilable" inconsistencies in their evidence that had not been adequately explained, and held that Ms. Toor had not met the onus of establishing on a balance of probabilities that the marriage was genuine. As with the Officer, the IAD had a number of credibility concerns including the following:

- (a) Mr. Chahal failed to demonstrate reasonable knowledge of Ms. Toor.
- (b) They failed to produce corroborating evidence of their alleged communications during the early period of their relationship, and gave no reasonable explanation for not providing those records.
- (c) Mr. Chahal provided markedly inconsistent evidence about his knowledge of Ms. Toor's criminal history. He told the Officer that, to the best of his knowledge, Ms. Toor had had no involvement with the police and he was unaware of her convictions. Before the IAD, both parties stated that Mr. Chahal was aware of all the details of Ms. Toor's arrests and criminal charges. The IAD did not accept Mr. Chahal's attempt to attribute his different answers to the Officer to nervousness and blood pressure issues. The IAD also questioned the decision to jump into a marriage before Ms. Toor's criminal cases had been resolved.

(d) The IAD discounted Mr. Chahal's evidence about his reasons for a hasty marriage because he had failed to offer the same explanations when this issue was raised by the Officer.

(e) The parties provided inconsistent evidence about the dates and details of their medical attendances for fertility testing, causing the IAD to doubt the reliability of their submitted medical records.

(f) The IAD doubted some of the evidence about money transfers because, on one reported occasion, Ms. Toor was in India at the time of the transfer. The parties also denied any knowledge of a documented money transfer made to the brother of the victim of Ms. Toor's criminal assault. The IAD found that their denial of knowledge cast doubt on their credibility.

[6] The IAD concluded its assessment of the evidence in the following way:

[23] Appellant's counsel submits that there is significant evidence of genuineness. Any inconsistencies are minor or could have been explained if they had been put to the witnesses. Some of the inconsistencies are immaterial. Some were not put to the witnesses and therefore cannot be used to impeach the Appellant's case, or at least the ones for which the significance was not readily apparent to the Appellant.

[24] However, there are significant inconsistencies and issues for which no reasonable explanation has been provided. There is some evidence of genuineness. However, the overall evidence points to the contrary. The marriage is not genuine. It was entered into primarily for the purpose of the Applicant acquiring status under the IRPA.

II. Standard of Review

[7] All the issues raised by Ms. Toor are evidence-based. It is well-established in the authorities that, in assessing the genuineness of a marriage, the IAD, as an expert tribunal, is owed considerable deference. That is particularly the case where the IAD is called upon to assess the credibility of witnesses or to resolve issues of mixed fact and law: see *Burton v*

Canada (Citizenship and Immigration), 2016 FC 345 at paras 13-15, [2016] FCJ No 308 (QL), and *Shahzad v Canada (Citizenship and Immigration)*, 2017 FC 999 at para 14, [2017] FCJ No 1058. The standard of review is, therefore, one of reasonableness.

III. Was the IAD's finding that Ms. Toor had failed to establish a genuine marriage reasonable?

[8] It is quite apparent that the IAD was not impressed with the evidence provided by Ms. Toor and Mr. Chahal. Quite clearly, it did not believe much of what they said about their motives for marriage and their plans for the future.

[9] Ms. Toor's primary challenge to the IAD's approach to the evidence is based on an asserted failure to adequately reconcile the evidence tendered in support of her case with the evidence the IAD relied upon in reaching its conclusion. She points to "significant evidence" of cohabitation, money transfers, a two-day trip to Thailand and their efforts to conceive a child, including fertility testing. In contrast, she argues that the IAD's pejorative credibility findings are supported by nothing more than the natural frailties of human beings called upon to recount events that occurred months or years before.

[10] The primary weakness in Ms. Toor's argument is that there were several significant problems with the evidence she and Mr. Chahal gave to the Officer and to the IAD. It was not unreasonable for the IAD to reject Mr. Chahal's testimony that he was, in fact, fully aware of Ms. Toor's criminal history on the basis that he gave a very different answer during the interview

with the Officer. This is not typically the kind of information that would be forgotten on the basis of nervousness but, regardless, the IAD was entitled to weigh that evidence as it saw fit.

[11] The IAD's concern about the absence of evidence to corroborate the frequency of communication between 2013 and 2015 was similarly not misplaced. The fact that they did not think to keep those records at the time does not displace the IAD's concern that the documents were not later produced after the Officer had expressed a similar reservation in his 2016 interview.

[12] It was also not unreasonable for the IAD to question the party's motives based on the haste of the marriage. This issue came up during the Officer's interview with Mr. Chahal and it did not elicit a response, let alone the detailed explanations that he later offered to the IAD.

[13] The IAD also had a reason for concern based on Ms. Toor's immigration history and her first failed marriage. Ms. Toor's alleged experience with an unfaithful and inattentive husband gave the IAD a reason to be suspicious about the decision to marry Mr. Chahal five days after meeting him.

[14] Ms. Toor complains that the IAD gave undue weight to certain inconsistencies about their efforts to conceive a child. If the only basis for rejecting the fertility testing records was Mr. Chahal's inability to recall the dates of his medical attendances, this concern would be well founded. However, the IAD had other concerns about Ms. Toor's testimony on this issue and found that she had "revised" her evidence under questioning. Ms. Toor argues that her evidence

was only clarified, and not revised; however, the characterization of evidence falls within the IAD's discretion and is not a basis for relief on judicial review. I would add that alleged attempts to conceive a child and to attend for fertility testing are not highly persuasive indications of the genuineness of a marriage, and fall well short of the weight afforded to the actual birth of a child.

[15] Ms. Toor compares her case to the decision in *Momi v Canada (Citizenship and Immigration)*, 2017 FC 50, 276 ACWS (3d) 428. There, Justice Elizabeth Heneghan quashed an IAD decision because it failed to assess the evidence supportive of the genuineness of a marriage and did not explain why that evidence was insufficient to overcome the “minor discrepancies” that it did rely upon. The IAD's approach was described as “unduly narrow and microscopic” [para 12].

[16] Another type of problem that can be of concern on judicial review is a situation where the visa officer or the IAD have initial suspicions about the genuineness of a marriage and adopt a tunnel vision approach to the evidence. This lack of objectivity can cause a decision-maker to unreasonably discount evidence that runs counter to the initial suspicion.

[17] Arranged foreign marriages can pose particular problems because the parties may lack detailed knowledge of their spouse's personal histories, and those gaps may not be filled where cohabitation after the marriage is periodic. The IAD must always be careful about drawing adverse inferences in such cases on the strength of minor lapses of memory or gaps in personal knowledge.

[18] I do not accept that the IAD's decision in this case includes the kind of adjudicative lapses that were of concern to the Court in *Momi*, above. I also cannot identify anything in the decision that reflects a lack of objectivity. The IAD accepted that there was some evidence indicative of a genuine marriage, but found that it was overwhelmed by the identified credibility problems.

[19] I accept that a different result was open to the IAD on this evidentiary record. A favourable outcome would also have been more likely had a stronger case been made in proof of the genuineness of this marriage. However, it is not the role of this Court on judicial review to substitute its own interpretations of the evidence for those reasonably made by the primary decision-maker.

[20] For the foregoing reasons, this application is dismissed.

[21] Neither party proposed a certified question, and no issue of general importance arises on this record.

JUDGMENT in IMM-2645-19

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2645-19

STYLE OF CAUSE: RAMANDEEP KAUR TOOR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: NOVEMBER 20, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** BARNES J.

DATED: DECEMBER 5, 2019

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