Federal Court  Cour fédérale

Date: 20200211

Docket: IMM-1729-19

Citation: 2020 FC 228

Ottawa, Ontario, February 11, 2020

PRESENT: Madam Justice McDonald

BETWEEN:

ANGELA VAZQUEZ BUENO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Introduction

[1] Michel Rodriguez Sosa applied for a permanent resident visa, as a member of the family class. His application was denied by a Visa Officer in Cuba. Angela Vazquez Bueno, the Applicant, is Mr. Sosa's wife and sponsor. She seeks judicial review of the decision of the Immigration Appeal Division [IAD] dated February 15, 2019, dismissing the appeal and

upholding the decision of the Visa Officer under section 4(1) of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) [*IRPR*].

[2] For the reasons that follow, I have concluded that the IAD did not properly consider the evidence, therefore, this judicial review is granted.

Facts

[3] The Applicant is a Canadian citizen who was born in Cuba, and currently resides in Canada. The Applicant and her husband met in Cuba in May 2008 and they spent 3 months together before the Applicant returned to Canada. She travelled back to Cuba in March 2009, at which time Mr. Sosa moved into her Cuban home. The Applicant visited Cuba at least once a year between 2009 and 2013.

[4] They married in Cuba on November 26, 2013. The Applicant says that they married quickly because the documents they required to marry were only valid for a limited time.

[5] The Applicant says that she was unable to visit Mr. Sosa during 2014 because she could not get time off work. The evidence was that she had several jobs. In 2015, she returned to Cuba and on February 14, 2015, the couple held a wedding ceremony and celebration.

[6] The Applicant applied to sponsor Mr. Sosa. He was interviewed by a Visa Officer in Havana, Cuba, on December 14, 2015.

[7] By decision dated July 11, 2016, the Officer refused the sponsorship application, as the Officer was not satisfied that the marriage was genuine.

[8] The Applicant appealed the Officer's decision to the IAD.

Decision Under Review

[9] The IAD found the Officer's concern that the Applicant had not recently visited Mr. Sosa in Cuba to be unfounded and unreasonable, and found that the evidence confirms that the Applicant had been visiting Cuba regularly. However, the IAD found that the Officer's other concerns were valid and the appeal was dismissed.

[10] The IAD concluded:

> [31] Based on the evidence before me, I find the Appellant has not provided sufficient evidence to establish on a balance of probabilities that this is a genuine marriage. While there was some evidence weighing in favour of genuineness, I do not find it sufficient to overcome the evidence weighing against genuineness, including the inconsistencies in evidence around significant events in their relationship and the genesis and development of the relationship.

Issues

[11] The Applicant raises a number of issues with the IAD decision, all of which can be addressed by assessing the IAD's treatment of the evidence for reasonableness.

Standard of Review

[12] This Court has determined that the standard of review for determining the *bona fides* of a marriage for the purposes of section 4 of the *IRPR* is reasonableness (*Zheng v Canada (Citizenship and Immigration)*, 2011 FC 432 para 18 [*Zheng*]).

[13] This is consistent with the presumption that when a court reviews an administrative decision on judicial review, the standard of reasonableness applies (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2018 SCC 65 at para 23).

[14] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not enough for the decision to be justifiable, it must also be justified, and where reasons are required, the decision must be justified by way of those reasons (*Vavilov* at para 85). As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker's reasoning on a critical point (*Vavilov* at para 103).

Analysis

[15] The Applicant (referred to as the Appellant by the IAD) argues that the IAD overlooked photographic and communication evidence. The Applicant argues that the IAD's reasons are neither transparent nor intelligible considering the extensive evidence showing communication from 2012 to 2018. The Applicant also submits the IAD's statement that there was "little context or dates provided" with respect to photographs is inaccurate because two photographs in

the record are dated 2009, and a number of other photographs indicate they are from 2012. The IAD found there was "some evidence" but gave it little weight.

[16] The Applicant also argues that the IAD's findings in relation to the evidence of her miscarriages was not reasonable. The IAD stated:

> [19] While the Appellant reportedly had lost two pregnancies in Canada, children conceived with the Applicant, no medical documentation confirming these experiences in Canada, have been provided, which would reasonably be available. There were letters to the Appellant and Applicant, sent to the Appellant's address in Canada from fertility care providers in Canada dated July and August 2016; however, these generic letters are addressed "Dear Patient" and give details about doctors going on leave and changing centres and do not give any indication of care or treatment being received by the couple at these facilities.
>
> [20] I find that while the Appellant may well have had the obstetrical history set out in the medical letter from Cuba, given the lack of detail in the letter, the inconsistent testimony around when the miscarriages were said to have occurred, and the lack of reasonably available supporting documentation from Canada with regards to the miscarriages that reportedly occurred in Canada, that it has not been established on a balance of probabilities that these occurred during the Appellant's relationship with the Applicant. As such, I do not find that the miscarriages support a genuine relationship between the Appellant and Applicant. In fact, I find that the inconsistent evidence around these significant events in the relationship detract from the genuineness of the relationship as it is reasonable to expect from a genuinely married couple that they would be able to credibly and consistently provide details about such events.

[17] The Applicant argues that the IAD's findings in relation to the miscarriages are contrary to medical documents filed which indicates that she suffered two miscarriages. She argues that this evidence strongly supports the genuineness of the couple's relationship.

[18] The Applicant also argues that that the IAD improperly minimized her trips to Cuba to visit her husband from 2012 to 2018, by assuming her trips were to visit her family in Cuba. The Applicant argues that this finding is unreasonable since there was no evidence that she visited relatives when she travelled to Cuba between 2009 and 2012.

[19] With respect to Mr. Sosa's inability to recall the date of the marriage, the Applicant relies on *Koo v Canada (Citizenship and Immigration)*, 2008 FC 931, where the Court found, at paras 37 and 38, that "human" and "inadvertent" errors in immigration forms may not be material when correct information is before the decision-maker:

> [38] The inadvertent errors made by the applicant and his consultant do not in any way meet the threshold of section 40 of the *Act*. Not only were they not misrepresentations, but they were not material either. As a matter of fact, the officer failed to conduct the proper analysis as to the materiality of the alleged misrepresentations, which is also a reviewable error. Finally, the officer had a duty to consider the totality of the information that was in the applicant's file with immigration for almost two years, which she did not do.

[20] While the Applicant does not dispute that Mr. Sosa failed to recall his exact wedding date, the Officer noted that Mr. Sosa was nervous and this should have been a factor taken into account.

[21] This Court has held there is no specific test or set of criteria for determining whether a marriage is genuine or not for the purposes of section 4 of the *IRPR*. As stated by Justice Near in *Zheng*, at para 23:

> …this Court has noted on a number of occasions that no specific test or set of criteria has been established for determining whether a marriage is genuine or not for the purposes of section 4 of the

> IRPR… As such, the IAD can not be faulted for considering a somewhat different set of criteria in the context of the current case. However, it should be noted, as the Respondent points out, that a number of criteria considered by the IAD in this case were, in fact, criteria referenced by the panel in *Khera*, above: the length of the relationship prior to marriage, former marital status, family backgrounds, and Ms. Huang's family connections to Canada (or the US, in this case). [Citations omitted]

[22] It is well established that decision-makers may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings should "not be based on a microscopic evaluation of issues peripheral or irrelevant to the case" (*Khakimov v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 18, at para 24; *Haramichael v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1197, at para 14, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11 and *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA)).

[23] In my view, the IAD engaged in an unreasonably microscopic evaluation of the issues and held the Applicant and Mr. Sosa to an unreasonably high standard of memory recall for events that occurred several years prior. This includes its overly microscopic review of the evidence of the miscarriages and fertility treatments, which in my view, are peripheral issues to the main issue of whether there was a genuine relationship. The IAD was also dismissive of reasonable explanations given for discrepancies in the evidence. This includes the date of the issuance of the marriage certificate.

[24] In keeping with *Vavilov*, the decision is not reasonable. A "reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching

logic, and it must be satisfied that ‘there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived’.” (*Vavilov* at par 102). The IAD’s decision falls short of this standard due to its unnecessary focus on peripheral issues and discrepancies for which reasonable explanations were provided. The IAD relied on irrelevant facts and considerations in its finding that the relationship was not genuine. As a result, the finding that the marriage was not genuine was neither justified nor reasonable based upon the record.

[25] I therefore grant this judicial review. The IAD’s decision will be quashed, and the matter will be remitted to another decision-maker.

[26] There is no question for certification.

JUDGMENT in IMM-1729-19

THIS COURT'S JUDGMENT is that the judicial review is granted, the IAD's decision is quashed, and the matter is remitted to another decision-maker. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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