Federal Court  Cour fédérale

Date: 20200731

Docket: IMM-4831-19

Citation: 2020 FC 805

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 31, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

CHARLOTTE MARIE BOURASSA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] An order issued by Associate Chief Justice Gagné on July 13, 2020, indicated that the parties had informally requested that the application for judicial review be dealt with in writing. This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. This constitutes the judgment and reasons of the Court.

[2] Ms. Bourassa, the applicant, is seeking to challenge a decision of the Immigration Appeal Division [IAD] rendered on July 17, 2019, dismissing Ms. Bourassa's appeal from the decision to refuse the application for permanent residence of her husband, Khalid Dikouk. The visa officer was not satisfied that the relationship between the applicant and her husband was genuine and that the marriage had not been entered into primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*. Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] provides as follows:

4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership:	**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

A. *The IAD decision*

[3] The IAD had to decide whether subsection 4(1) of the Regulations applied, which would mean that Ms. Bourassa could not sponsor her husband since he was not a member of the family class. Given that paragraphs (a) and (b) are conjunctive, it follows that failure to meet either condition will be sufficient to reject the sponsorship application (*Canada (Citizenship and Immigration) v Moise*, 2017 FC 1004).

[4] The IAD began by commenting on the applicant's history of past sponsorships. Paragraph 4 of the decision reads as follows:

> [4] The appellant is a 55-year-old citizen of Canada. She was married and divorced three times before meeting the applicant; first with an Algerian citizen whom she met and married in Montréal in 1998 and then sponsored and who became a permanent resident through her sponsorship. She separated from him in 2001 and got divorced in January 2003. Then, in October 2013, she married an Algerian citizen whom she met in Montréal and whom she tried to sponsor in Canada; she later cancelled that sponsorship. She divorced in 2005. Then, she married a Moroccan citizen in Morocco, whom she sponsored and who became a permanent resident. Their divorce was finalized in July 2015; he was 15 years her junior and wanted to have children. The appellant is on her fourth marriage with a subsequent sponsorship application. She converted to Islam in October 2004 in Canada with the help of a Moroccan friend.

The applicant's husband, meanwhile, is a 34-year-old Moroccan citizen who had never been married, lives with his parents in Morocco and has no children.

[5] The circumstances in which these two individuals entered into the marriage are also described:

> [6] The couple met on January 26, 2016, on muslima.com, a dating website for Muslims. The appellant contacted the applicant through this site, inviting him to contact her off the site via Skype. He answered her and they continued to write and make video calls to each other. The appellant travelled to Morocco on June 18, 2016, for a one-month stay. The couple was married on July 4, 2016, during this trip. On October 19, 2016, the appellant applied to sponsor the applicant.

[6] The visa officer who met with the applicant's husband in March 2017 was not satisfied. Understandably, the IAD experienced similar difficulties in its consideration of this appeal in which the various parties testified.

[7] In its examination of the genuineness of the marriage and the potential primary purpose of acquiring immigration status or privilege, the IAD considered a series of criteria, which, while not exhaustive, are useful:

- the intent of the parties to the marriage;
- the spouses' compatibility;
- the development of the relationship between them;
- the communications they had;
- financial support;
- their knowledge of each other; and
- visits that may have taken place.

The IAD's finding that subsection 4(1) of the Regulations had not been complied with resulted from its examination of these criteria.

[8] Indeed, the appellant and Mr. Dikouk are not compatible in terms of age, culture or marital history. Although not determinative in themselves, these incompatibility factors militate against the genuineness of the relationship and the purpose of the marriage. The IAD thoroughly analyzed the swift development of the relationship and the rushed wedding. For example, with only two weeks of online contact, there was talk of the applicant going to visit Mr. Dikouk in Morocco. By February 2016, the plane ticket had been purchased. The applicant indicates that her plan was to marry him during that trip. The applicant obtained a certificate of marriage aptitude from the Consulate General of Canada in Rabat on June 22, 2016, just a few days after her arrival in Morocco.

[9] There was a civil wedding ceremony, and the marriage certificate was drawn up by the Moroccan civil registrar before two witnesses. Despite the fact that the two individuals involved claim to be practising Muslims, there was no religious celebration. A reception with members of the husband's family was to be held on July 12, 2016.

[10] The IAD noted that discussions regarding the husband's immigration to Canada began very early in their virtual relationship. Paragraph 18 of the decision states the following:

> [18] It also appears that in the February 2016 communications, less than a month after the two contacted each other for the first time, even before any talk of marriage between them, the applicant discussed the immigration process in Canada. It is not very clear from the exchanges, but that does appear to have been the subject of their discussions. When questioned about this, however, the appellant acknowledged in her testimony that there was talk of the immigration process in their conversations at that time. The appellant stated that they had known each other for [translation] "a while" when they spoke of immigration, and that the applicant had feelings for her. However, they had been exchanging messages and talking to each other for less than a month at that point. No reasonable explanation was given as to why the applicant was interested in immigration forms so early in their relationship. This suggests that the applicant was interested in the process for immigrating to Canada: a big clue that his intention was to acquire status in Canada by entering into a relationship with the appellant.

Furthermore, the applicant testified that the mother of her future husband was introduced to her two weeks after the first virtual contact. The applicant's future husband explained to his mother that Canada was far away and that, if he went to live there, his visits to Morocco would be few and far between. This led the IAD to comment that "[t]his shows that a mere two weeks after making the appellant's acquaintance, the applicant brought up the fact with his mother that he might go to live in Canada even though he had made the appellant's acquaintance only a short

while ago. This clearly suggests that the intent of the applicant in pursuing this relationship was to acquire status in Canada" (para 20).

[11] Attempting to establish the true motivation for the marriage, the IAD noted that "[t]he applicant did not reasonably explain why he had entered into a relationship with a woman in Canada who had been unknown to him before that point, who told him from the start that he could not have children with her, and that he introduced her to his mother as a person he was interested in marrying, within a week or two of making her acquaintance" (para 22). This is relevant because the applicant's husband had stated that prior to meeting the applicant, he [TRANSLATION] "naturally" wanted children. For the IAD, this was another indication that the true intention was to acquire status in Canada.

[12] The IAD was also concerned that the spouses' marriage certificate does not reflect reality. The certificate indicates that this was the applicant's second marriage, whereas it was actually her fourth. The applicant could not explain how such an error occurred. Similarly, the sponsorship application form, completed by the applicant herself, indicates only one previous marriage. The explanation she provided was that the information requested on this form must cover the last ten years, but this is not supported by the form itself. In fact, the form specifically states that a separate sheet may be used to provide the requested information. For the IAD, the applicant's credibility was clearly undermined by the fact that she provided this erroneous information.

[13] In fact, the IAD noted that, at the visa office interview, the applicant's husband did not appear to know that this was his wife's fourth marriage. Yet the spouses testified that they had been talking to each other every day from the beginning. The IAD commented that, normally, "such information ought to have been disclosed to a future spouse in a genuine relationship, especially since the applicant testified that what he liked about the appellant from the beginning was her sincerity and authenticity" (para 24). In fact, the husband was never able to state clearly when he had found out that the applicant had been married three times before him. Again, this was seen as undermining the couple's credibility.

[14] Finally, the IAD noted a lack of knowledge regarding each other's family members and the applicant's daily life. In particular, the husband demonstrated no interest in the applicant's daughter.

[15] The IAD did note the constant and regular communication between the applicant and her husband and the financial support she provides to him. There have been three visits to Morocco since their marriage in July 2016, for periods of one week, two weeks and one month. The IAD nevertheless found that, on a balance of probabilities, the marriage of the applicant and her husband was entered into primarily for the purpose of acquiring status in Canada and that the genuineness of the marriage had not been established.

B. *Parties' arguments*

[16] The applicant submits that the issue to be determined on judicial review is whether the IAD erred in its application of subsection 4(1) of the Regulations and whether an error was made

with respect to the findings on the spouses' credibility. This is not the burden that the applicant must meet. Rather, the applicant must show the Court that the IAD's decision is unreasonable, which of course implies a degree of deference to the decision rendered.

[17] The applicant therefore seeks to provide explanations for the various elements of the analysis contained in the IAD's decision. According to the applicant, she has been in constant contact with Maghrebis since 1998 and has thus become immersed in her husband's culture. The age difference is explained as a question of personal taste.

[18] The applicant states, but does little to demonstrate, that her husband's testimony as to his intention to leave Morocco was not vague. Perhaps perceiving that her husband's intentions might suggest that he was seeking status in Canada, she insists that it was she who initiated the contact. The applicant fails to mention the interest in immigrating to Canada that was shown very early on in her relationship with the man she was to marry a few months later.

[19] The applicant submits that her credibility was unduly tarnished by the statements in the marriage certificate and the sponsorship application form to the effect that she had been married only once before. The marriage certificate was a case of good faith error, whereas with the application form, she was not offered access to it at the hearing to confirm that it was limited to information for the last ten years. The fact remains that the form, as stated by the IAD, does not limit the required information to the last ten years. Even if the applicant had had the form in her hands, she would not have found the ten-year limit that she relies on to explain why she disclosed only one marriage. As for the fact that the applicant's husband was unable to say when

he learned that the applicant had been married three times before him, the applicant has no answer. Rather, the applicant argues that the IAD attacked the failure to disclose. However, this is not the only such instance. The IAD also drew a negative inference from the failure to clearly state when the applicant's husband learned that the applicant had been married three times before. The damaged credibility undermines the claim that the relationship is genuine, and the applicant does not explain how this constitutes an unreasonable finding. It is simply that the spouses' credibility regarding the applicant's marital situation demonstrates, in the IAD's view, a lack of candour that weighs in the balance when assessing the factors to be considered under section 4 of the Regulations.

[20] Finally, the applicant attempts to explain her husband's lack of knowledge about her family situation and in particular, about her relationship with her daughter. Indeed, the applicant's memorandum of fact and law refers to family and personal problems. The applicant tries to counter all of this by pointing out that her husband has communicated with her family (mother, brothers and sisters).

[21] The respondent points out that it is up to the applicant to show that the IAD's decision is unreasonable. That is the standard of review. The applicant's husband cannot be considered a spouse for the purposes of an application for permanent residence if the marriage is not genuine or is entered into primarily for the purpose of acquiring immigration status. It is up to the applicant to demonstrate, on a balance of probabilities, that the marriage is genuine and was not entered into for the purpose of acquiring such status. In the respondent's view, the conclusion reached by the IAD was entirely reasonable.

[22] Having reviewed the various elements considered by the IAD, the respondent concludes that the finding is reasonable. What the applicant is asking of the Court, according to the respondent, is a *de novo* review of the evidence to arrive at a different conclusion, which is not the role of a reviewing court in an application for judicial review. Judicial deference requires that the application for judicial review be dismissed.

C. *Analysis*

[23] This Court has consistently held that the applicable standard in a review under section 4 of the Regulations is reasonableness (*Idrizi v Canada (Citizenship and Immigration)*, 2019 FC 1187; *Phan v Canada (Citizenship and Immigration)*, 2019 FC 923; *Pabla v Canada (Citizenship and Immigration)*, 2018 FC 1141; *Moise*, above). This standard of review was confirmed by the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court reiterated the existence of a presumption that the applicable standard is reasonableness (para 23 et seq.). Moreover, no attempt has been made in this case to rebut such a presumption, which is otherwise rebuttable in this type of case.

[24] There are nevertheless consequences flowing from application of the reasonableness standard of review. It in fact implies that the reviewing court must show judicial restraint, or deference, toward the decision of the administrative tribunal (paras 75, 13 and 14). In *Vavilov*, the Court states that the reviewing court "asks whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para 13" (para 99).

[25] Not only does the standard of review command judicial deference, but the burden of demonstrating unreasonableness is on the applicant. In *Vavilov* the Court states that "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. . . . Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (para 100).

[26] In my view, the applicant has not discharged her burden of demonstrating, on a balance of probabilities, such serious flaws or shortcomings as to fail to meet the test of justification, intelligibility and transparency. The applicant has merely sought to present a different picture of certain elements of the IAD's decision. Not only is this merely a different perspective, rather than a demonstration of serious flaws, but the applicant made no effort whatsoever to explain the interest expressed by her spouse as the relationship was just beginning to develop in January 2016 with regard to the possibility of immigrating to Canada if they were to marry. This, in my view, carries considerable weight in addition to the other elements examined by the IAD. Moreover, the findings as to the credibility of the testimony were never seriously jeopardized.

[27] It cannot be argued in this case that there is a lack of internal logic to the reasoning advanced by the IAD, nor can it be argued that the decision is in some respect untenable in light of the factual and legal constraints. The decision is inherently rational and logical.

[28] At the end of the day, a decision that is seriously flawed cannot be allowed to stand. However, where a decision is not tainted by such shortcomings, deference must be accorded an administrative tribunal with the specialized expertise for contextualizing the questions that come before it. To the extent that a decision is tenable, it must be upheld. That is the case here.

[29] Accordingly, the application for judicial review must be dismissed. No serious question of general importance is certified.

JUDGMENT in IMM-4831-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
This 25th day of August 2020

Margarita Gorbounova, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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WRITTEN SUBMISSIONS BY:

Aristide Koudiatou	FOR THE APPLICANT
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT