

Federal Court



Cour fédérale

Date: 20200728

Docket: IMM-6925-19

Citation: 2020 FC 798

Montréal, Quebec, July 28, 2020

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

NAVKIRAT KAUR

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Navkirat Kaur seeks judicial review of the October 22, 2019 decision by the Immigration Appeal Division (IAD) dismissing her appeal of the decision rendered by the Immigration Section of the Canadian High Commission in India (IS) on November 29, 2018.

[2] The IS was not satisfied Mr. Simbranpreet Singh, Ms. Kaur's spouse, is not inadmissible and meets the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [the Immigration Act]. The IS cited statutory and regulatory sections, namely subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Immigration Regulations]. Ultimately, it was not satisfied that Mr. Singh's marriage to Ms. Kaur is genuine or that it was not entered into primarily for the purpose of acquiring permanent residence in Canada and, as a result, it did not consider Mr. Singh to be a member of the Family class.

[3] On appeal, the IAD found that when all of the relevant evidence was weighed on a balance of probabilities, Ms. Kaur had not met her onus under subsection 4(1) of the Immigration Regulations to establish that her marriage to Mr. Singh is genuine.

[4] For reasons set out below, this Application for judicial review of the IAD decision will be dismissed.

II. Background

[5] Ms. Kaur is a citizen of India, and since 2017, a Canadian permanent resident, and Mr. Singh is an Indian citizen. They both initially came to Canada as students.

[6] In November 2011, Mr. Singh was charged with sexual assault, which was subsequently dropped, and in November 2013, Mr. Singh was charged with theft/shoplifting. As his Canadian status had been expired since May 2012, Mr. Singh was detained, and in February 2014, he was removed from Canada to India.

[7] Ms. Kaur and Mr. Singh allegedly becoming a couple on or around October 2012, while both were in Toronto. In January 2017, Ms. Kaur became a permanent resident. In February 2017, she traveled to India, in March 2017 hers and Mr. Singh's families met for the first time, and on April 2017, she and Mr. Singh were married. Ms. Kaur traveled to India to see Mr. Singh only one another time in June 2017.

[8] In September 2017, Ms. Kaur applied to sponsor Mr. Singh, while he applied for Canadian permanent residence status in the Family class, as her spouse.

[9] On November 28, 2018, a visa officer interviewed Mr. Singh to evaluate his permanent residence application under the Family Class; the officer's interview notes are in the Certified Tribunal Record (CTR) at pages 281 to 283. The interview was conducted in English, without an interpreter, as Mr. Singh confirmed he could understand.

[10] Ultimately, the visa officer indicated to Mr. Singh that his responses did not alleviate his or her concerns, and the refusal letter was sent the same day. Mr. Singh's application was refused as the officer not satisfied that he was not inadmissible, nor that his marriage to Ms. Kaur is genuine or that it was not entered into primarily for the purpose of acquiring permanent residence in Canada (CTR at pages 808–809).

III. IAD decision

[11] On August 12, 2019, the IAD held a hearing where Ms. Kaur, her brother, and Mr. Singh testified. Ms. Kaur and Mr. Singh benefitted from an interpreter service in Punjabi, and confirmed their understanding of the interpreter.

[12] On August 27, 2019, Mr. Kaur faxed written submissions to the IAD. They addressed Mr. Singh's inadmissibility, both the genuineness of the marriage and the intent of the parties, and asked the IAD for discretionary relief based on humanitarian and compassionate grounds.

[13] In its decision, the IAD concluded, on balance of probabilities, that Ms. Kaur has not met her onus on subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, and that she has not established that the marriage is genuine. The IAD found there were gaps in her evidence, and applied the test as enunciated in *Chavez v Canada (Minister of Citizenship and Immigration)*, [2005] IADD No 353.

[14] The IAD particular examined the genesis of the relationship and the knowledge the parties have of each other, and of each other's family circumstances and daily lives.

[15] Regarding the genesis of the relationship, the IAD was concerned with (1) the parties' alleged cohabitation in Ontario from January to August of 2013 given the discrepancies in the evidence; (2) their commitment to each other, finding that Mr. Singh's explanation that he did not move to British Columbia with Ms. Kaur because he did not have his passport was not credible; (3) the fact that Ms. Kaur visited Mr. Singh in India twice since he left in February 2014, the first time in early January when she married, and the second time in June 2017; (4) the fact Mr. Singh did not meet Ms. Kaur's parents in India before March 2017, despite their alleged long term relationship and his presence in India since 2014; and (5) the timing of the marriage, as only Ms. Kaur's immigration status in Canada had changed.

[16] Regarding the knowledge the couple had of each other, the IAD found that they did not know each other well notably because Ms. Kaur was unable to testify in any detail about Mr. Singh's criminal history, his first work in India nor the ending of his studies in Canada. The couple's evidence was also inconsistent as to what Ms. Kaur's family knew about the relationship. The IAD thus found the knowledge the couple had of each other was not consistent with a cohabitation of eight months. The IAD especially found problematic that Mr. Singh's criminal history was not thoroughly discussed amongst themselves and with the parents.

[17] The IAD acknowledged that the couple provided numerous letters of support, but noted many were almost identical, and concluded that the weight that could be afforded to these letters lessened their assistance to the appeal.

[18] Balancing various factors, and recognizing positive factors of some communication, some travel to India by Ms. Kaur, and Mr. Singh's knowledge of Ms. Kaur's work, the IAD found that these elements did not outweigh the concerns regarding the inconsistencies in the evidence.

[19] The IAD declined to entertain the request for discretionary relief as it does not have such jurisdiction in an appeal pursuant to subsection 4(1) of the Immigration Regulations.

[20] Ultimately, the IAD found the marriage between Ms. Kaur and Mr. Singh not to be genuine and dismissed the appeal.

IV. Issues

[21] Ms. Kaur raised a number of arguments in her written memorandum and in essence, the Court must decide if the IAD breached procedural fairness and if the IAD decision is reasonable.

[22] Before this Court, Ms. Kaur submitted an affidavit from Mr. Sarb Sandhu, an Accredited Interpreter, where he provided his expert opinion on the quality of the translation before the IAD, which he constructed from the CD audio recording of the hearing, before the official transcript was released. At the hearing, I raised Rule 10(2)(d) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [Federal Court Immigration Rules], setting out that an application for leave includes, *inter alia*, one or more supporting affidavits verifying the facts relied upon by the Applicant in support of the application. I thus questioned the validity of Mr. Sandhu's affidavit given it constitutes his expert opinion and it is not limited to facts (*Conka v Canada (Citizenship and Immigration Canada)*, 2018 FC 532 para 13; *Bakary v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111 at para 5). Ms. Kaur's counsel acknowledged that Mr. Sandhu's opinion and arguments were not admissible.

[23] Ms. Kaur has raised new and additional arguments at the hearing, but the Court will decline to entertain them (*Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 para 81; *Del Mundo v Canada (Citizenship and Immigration)*, 2017 FC 754 para 12-14; *Mishak v Canada (Citizenship and Immigration)* (1999), 173 FTR 144 para 6; *Adewole v Canada (AGC)*, 2012 FC 41 para 15).

V. Alleged breach of procedural fairness?

[24] Ms. Kaur does not specifically indicate the standard of review for procedural fairness but submits before this Court that the IAD failed to observe principles of natural justice for inadequacies in interpretation. She argues that numerous material interpretive errors in addition to omissions, and misinterpretation occurred, which irrevocably impaired the credibility of the witnesses.

[25] Citing *Xie v Canada (Minister of Employment and Immigration) (1990)*, 10 Imm LR (2d) 284 (FCA), Ms. Kaur argues that the adjudicator of a hearing has the duty to ensure the interpreter is competent.

[26] The Minister argues that in order for Ms. Kaur to establish breach of procedural fairness, she must demonstrate that the interpretation provided at the hearing was not continuous, precise, impartial, competent and contemporaneous. She must also demonstrate that interpreter's misinterpretations were material to the board's credibility findings (*Mowloughi v Canada (Citizenship and Immigration)*, 2012 FC 662 at para 18; *R v Tran*, [1994] 2 SCR 951 at para 69; *Nsengiyumva v Canada (Citizenship and Immigration)*, 2005 FC 190 at para 16). According to *Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191, the Minister argues that any alleged error of interpretation must be raised at the first opportunity. Actual prejudice need not be shown but the error must be more than trifling (*Mah v Canada (Citizenship and Immigration)*, 2013 FC 853 at paras 23–24).

[27] The Minister submits that the translation errors were immaterial to the findings of the IAD, that Counsel for Ms. Kaur should have been aware at an earlier stage if Ms. Kaur or Mr. Singh had trouble communicating with an interpreter, and that Ms. Kaur suffered no prejudice as a result of those alleged errors.

[28] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] did not prescribe the standard of review for procedural fairness. Neither did *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67. It is, therefore, understood that these decisions did not modify the applicable law on the standard of review of procedural fairness. The procedure must be fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at 55; *Demitor v Westcoast Energy Inc. (Spectra Energy Transmission)*, 2019 FCA 114 at 26; *Lessard-Gauvin v Canada (Attorney General)*, 2019 FCA 233).

[29] The right is to adequate translation not perfect translation, and the fundamental value is linguistic understanding, and waiver of the right results if an objection is not raised at the first opportunity. Ms. Kaur has not argued that counsel raised a concern before the IAD, and there is no evidence that Ms. Kaur's counsel did raise any issue relating to the quality of the translation. Ms. Kaur thus waived her right as a result (*Mohammadian* at paras 12, 19; *Mah v Canada (Citizenship and Immigration)*, 2013 FC 853 paras 11, 13–14, 19–20).

[30] Ms. Kaur has not demonstrated the IAD breached procedural fairness.

VI. Is the decision reasonable?

[31] Ms. Kaur submits that the decision of the IAD is unreasonable.

[32] Although Ms. Kaur raises some arguments under interpretative issues, they seem to fall more appropriately under the reasonableness analysis. In particular, she attacks paragraphs 22–23 of the IAD’s decision, which made a negative inference of her inability to testify on a list of her husband’s past legal issues. She argues that these legal issues happened over seven years ago and it should not be expected of her to recall every detail. She adds that she is aware of the sexual assault charges that were later dropped against her husband, and that she even retained counsel for her husband. She argues that the fact she did not remember the exact number of detention reviews or her exact communication with the legal counsel does not support the conclusion that the marriage is not genuine. She also attacks the IAD’s conclusion that none of the two spouses were able to explain how the family overlooked the criminal charges because she insists she testified before the IAD, minimizing the criminal charge, and she indicated that “What I was trying to say was I had spent time with him. We were in the same college and I knew him very well. We were sharing every information with each other and I was quite sure that, you know, nothing that sort has happened with him” (CTR at 865).

[33] Ms. Kaur also submits that the IAD erred in law by not considering the appeal as a *de novo* process. She argues that the IAD gave too much weight to the fact that there is an omission of mentioning that they moved in together in the original narrative, characterized by the IAD as being quite detailed, as part of the sponsorship application. Ms. Kaur adds that the *viva voce*

testimony of her husband, her brother, and herself are more than sufficient to establish that the couple resided together.

[34] Ms. Kaur further submits that the IAD erred by disregarding the affidavit of the parents, and that it unreasonably discredited the letters of support and affidavit for being highly similar.

[35] Regarding the discrepancies as to the evidence on when the parents met, Ms. Kaur submits his parents' affidavit clearly indicated that they met on March 5, 2017. She also argues that Mr. Singh provided verbatim testimony that the exact date of meeting was March 5.

[36] Ms. Kaur essentially argues that her evidence has not been given proper weight, and if proper weight were given, the outcome would have been different. Ms. Kaur, therefore, submits the decision is unreasonable.

[37] The Minister submits the decision of the IAD is reasonable.

[38] Citing *Kaur Nahal v Canada (Citizenship and Immigration)*, 2016 FC 81 at paras 5–9 [*Kaur Nahal*], *Seraphin v Canada (Citizenship and Immigration)*, 2015 FC 779 at paras 9–10, and *Canada (Public Safety and Emergency Preparedness)*, 2013 FC 215 at paras 13, 43, the Minister submits that (1) the Applicant has the onus to prove on a balance of probabilities the *bona fide* nature of the marriage; (2) the test in subsection 4(1) of the Immigration Regulations is disjunctive such that meeting either of the conditions is enough to demonstrate the marriage is

not *bona fide*; (3) there is no specific test to establish whether a marriage is genuine; and (4) the IAD or visa officer has the discretion to assign weight to various factors.

[39] The Minister submits that the IAD did not ignore or fail to properly assess any evidence, and reiterates that the IAD has discretion over the weight given and the credibility problems identified (*Kaur Nahal* at para 9). The Minister adds that the credibility findings based on oral testimonies and documentary evidence were reasonable.

[40] The Minister, in particular; (1) highlights the hurry at which the couple got married; (2) the fact that neither Ms. Kaur nor Mr. Singh were able to give a reliable account of the development of their relationship; (3) the fact that the detailed narrative never indicated that Mr. Singh moved in with Ms. Kaur; (4) the fact that they indicated being together from 2013, but there were no meetings of the family until March 2017; and (5) the fact that the couple did not provide consistent evidence of what the parents knew about the relationship.

[41] On the knowledge of each other, the Minister highlights three main inconsistencies raised by the IAD: (1) no demonstration of intimate knowledge of each other after five years of relationship; (2) the couple appeared unwilling to address the criminal history issue; (3) Ms. Kaur appeared unaware of the details of the sexual assault charges.

[42] Since *Vavilov*, the standard of review is presumed to be reasonableness, and nothing rebuts this presumption in this case (at para 10). A reasonable decision must be internally coherent and responsive to both the factual and legal constraints that bear on it. The court when

reviewing an administrative decision on the reasonableness standard is to ensure that the decision is justified, intelligible, and transparent to the individuals subject to it (at para 95). It cannot and should not reweigh the evidence (at para 98).

[43] A reasonableness review requires deference to the decision-maker, as it is “grounded in the legislature’s choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing” (*Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47). The IAD has discretion over the weight given and the assessment of credibility, and again, it is not the role of the Court to reweigh the evidence.

[44] Ms. Kaur has not established that the concerns, omissions and inconsistencies raised by the IAD are not supported by the record, and I am satisfied they are sufficient to support the IAD’s conclusion regarding the genuineness, or lack thereof, of the marriage. The IAD is presumed to have considered all the evidence, including the parents’ affidavit. In essence, Ms. Kaur is essentially asking the Court to reweigh the evidence, which is not its role in judicial review, and I will thus decline the invitation to do so.

VII. Conclusion

[45] The IAD decision is justified, intelligible, and transparent. The concerns and inconsistencies it raised are found in the record, and sufficient to justify its conclusion that the marriage is not genuine, as required by section 4 of the Immigration Regulations. The decision is thus reasonable.

JUDGMENT in IMM-6925-19

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.
2. No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6925-19
STYLE OF CAUSE: NAVKIRAT KAUR v MINISTER OF CITIZENSHIP
AND IMMIGRATION
PLACE OF HEARING: MONTRÉAL, QUEBEC (VIDEOCONFERENCE)
DATE OF HEARING: JULY 23, 2020
JUDGMENT AND REASONS: ST-LOUIS J.
DATED: JULY 28, 2020

APPEARANCES:

Navratan Singh Fateh

FOR THE APPLICANT

Hilla Aharon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sanghera Sandhar Law Group
Surrey, British Columbia

FOR THE APPLICANT

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT