

Federal Court



Cour fédérale

**Date: 20220114**

**Docket: IMM-1997-21**

**Citation: 2022 FC 45**

**Ottawa, Ontario, January 14, 2022**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**GURPREET KAUR BATTU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Gurpreet Kaur Battu, seeks judicial review of a decision of the Immigration Appeal Division (“IAD”), dated March 12, 2021, to dismiss an appeal of a visa officer’s (the “Visa Officer”) decision to refuse the Applicant’s spousal sponsorship application for permanent residence.

[2] The IAD upheld the Visa Officer's decision and found that the Applicant had not met her onus of establishing that her husband's primary purpose for entering the relationship was not to obtain immigration status in Canada, pursuant to paragraph 4(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRPR").

[3] The Applicant submits that the IAD's decision is unreasonable because the IAD failed to consider relevant evidence of the primary purpose for entering the relationship and failed to examine the portion of the evidence that addresses the genuineness of the marriage.

[4] For the reasons that follow, I find that the IAD's decision is unreasonable. This application for judicial review is granted.

## **II. Facts**

### **A. *The Applicant***

[5] The Applicant is a 49-year-old Canadian citizen. She has two adult children from her first marriage. The Applicant's first husband died by suicide in 2002.

[6] On February 24, 2019, the Applicant married her current husband, Mr. Gurpreet Singh Gill ("Mr. Gill"). Mr. Gill is 32 years old and a citizen of India. The Applicant subsequently applied to sponsor Mr. Gill for permanent residence as her spouse.

[7] Prior to meeting the Applicant, Mr. Gill had applied for a temporary resident visa (“TRV”) to come to Canada unsuccessfully on nine occasions between October 2013 and June 2018.

[8] The Applicant and Mr. Gill began their relationship in August 2018. After meeting online through Facebook, they continued to communicate through text messages and phone calls. The couple first met in person when the Applicant travelled to India in October 2018.

[9] The couple had a private wedding ceremony in India on February 24, 2019. Neither of their families attended the ceremony. Following the wedding, the couple lived together in India for approximately two weeks before the Applicant returned to Canada.

[10] On November 3, 2019, the Applicant and her husband attended an interview at the Canadian High Commission in New Delhi, India.

[11] By letter dated January 3, 2020, the Visa Officer refused the application, finding that the marriage did not satisfy section 4 of the *IRPR*. In particular, the Visa Officer was concerned about: a) Mr. Gill’s intentions in entering the marriage given his nine previous TRV applications to Canada, b) Mr. Gill’s insufficient personal knowledge of the Applicant, c) a lack of compatibility in terms of age and marital history, and d) the Applicant’s credibility based on the secrecy of the marriage and a related police protection order.

B. *Decision Under Review*

[12] In a decision dated March 12, 2021, the IAD refused the Applicant's appeal. The IAD considered: a) the circumstances when the couple met, including Mr. Gill's nine TRV refusals, b) the Applicant's relationship history, c) the development of the relationship, and d) the circumstances surrounding a police protection order, obtained around the time of the wedding.

[13] Ultimately, the IAD found that the Applicant had not established that Mr. Gill's primary purpose for entering the relationship was not to obtain immigration status in Canada, pursuant to paragraph 4(1)(a) of the *IRPR*. Given this conclusion, the IAD found it unnecessary to determine whether the marriage is genuine under paragraph 4(1)(b) of the *IRPR*. To support this reasoning, the IAD cited this Court's decision in *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at paragraph 37:

As the marriage did not satisfy the primary purpose test, there was just no need for the IAD to analyze whether the marriage between Mr. Basanti and Mrs. Basanti was genuine under paragraph 4(1)(b). Having found that the primary purpose of the marriage was for Mrs. Basanti to acquire a status or privilege under IRPA, it was certainly not unreasonable for the IAD to end its analysis of subsection 4(1) as it was not required to do a genuineness inquiry under paragraph 4(1)(b). In fact, it was the correct reading of the provision. The IAD committed no error in doing so.

**III. Issues and Standard of Review**

[14] There are two issues in this application for judicial review:

- A. *Whether the IAD erred in finding that the primary purpose of the marriage was for Mr. Gill to gain immigration status in Canada.*
  
- B. *Whether the IAD erred by not analysing the genuineness of the marriage.*

[15] Both parties submit that the standard of review is reasonableness. I agree (*Zhou v Canada (Citizenship and Immigration)*, 2020 FC 633 (“*Zhou*”) at para 33). I find this accords with the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paragraphs 16-17.

[16] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[17] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than

superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

#### IV. Analysis

##### A. *Primary purpose of marriage*

[18] The IAD considered the development of the relationship in its assessment of the Applicant and Mr. Gill’s intentions at the time of marriage. The IAD noted that Mr. Gill’s nine refused TRV applications show a strong desire to come to Canada and found them not to be in his favour. The IAD noted the Applicant had not informed Mr. Gill of previous relationships outside her first marriage and found that Mr. Gill “[...] was not interested in learning about the [Applicant’s] relationship history because he entered into the marriage primarily for immigrations purposes.”

[19] The IAD found that the Applicant was “unlikely in a position to recognize [Mr. Gill’s] primary purpose in entering the marriage as related to immigration.” The IAD remarked that Mr. Gill had testified that he began loving the Applicant in the first week of their communication. Given the Applicant’s testimony that she had felt emotionally manipulated in a previous relationship, the IAD expected that the Applicant would enter a new relationship cautiously:

[...] one would expect her to have a certain level of caution when approaching a new relationship. However, communication records reflect she reciprocated the Applicant’s words of affection early in their contact.

[20] With respect to the police protection order, the IAD noted that the couple claimed to have obtained the order while the Applicant was in India for the wedding because they feared violence from Mr. Gill's family. However, the IAD found that the order was "likely obtained to explain the lack of participation of [Mr. Gill]'s family in the development of the relationship and wedding rather than a result of a genuine fear of his family."

[21] The Applicant relies on this Court's decision in *Tamber v Canada (Citizenship and Immigration)*, 2008 FC 951 ("*Tamber*") to submit that the IAD's treatment of the evidence placed too much reliance "[...] on minutiae and marginalities without enough attention being paid to the evidence bearing directly on the *bona fides* of the marital relationship" (at para 18). In particular, the Applicant contends that the IAD placed too much emphasis on Mr. Gill's nine refused TRV applications as evidence of his motivation to come to Canada.

[22] The Applicant maintains that it is unreasonable to expect a couple to share with each other every relationship they have ever had, particularly given the Applicant's own difficult relationship history and her first husband's death by suicide. The Applicant also takes issue with the IAD's assumption that she was incapable of being able to assess Mr. Gill's intentions, or that the speed of the relationship was determinative of its genuineness. As she explained at her IAD hearing, the Applicant's decision was significantly influenced by her experience and her age.

[23] Furthermore, the Applicant argues that a review of the decision shows that the IAD did not make an explicit negative credibility finding, and that the sworn testimonies are thus presumed to be true and viewed as the "most probative evidence regarding their primary purpose

for entering into the marriage” (*Chin v Canada (Citizenship and Immigration)*, 2019 FC 1642 at para 11, citing: *Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at para 33).

[24] The Applicant also submits that the IAD’s conclusions that the police order was obtained to provide an excuse for the lack of family participation in the relationship lacks justification or transparency. The Applicant contends that their fear of a violent response from Mr. Gill’s family was genuine, and is supported by objective country condition evidence of violence from families towards couples in similar situations as the Applicant and Mr. Gill.

[25] Additionally, the Applicant submits that the IAD misunderstood the evidence related to the petition for a police protection order, only reviewing the order confirming the withdrawal of police protection on March 14, 2019, and ignoring the order granting police protection on February 28, 2019, which was included in the record before the Visa Officer. The IAD stated:

Curiously there is only one date that appears on the court documents that have been provided for the appeal. The court decision states that notice to the respondent be issued for March 14, 2019 as well as a copy sent to the police station the same date.

[26] The Respondent submits that the IAD reasonably and justifiably concluded that the marriage was entered into primarily for the purpose of acquiring immigration status. The IAD based this finding on Mr. Gill’s early declarations of affection and lack of knowledge of the Applicant’s relationship history, Mr. Gill’s TRV applications, and the finding that the police protection order was likely obtained to explain the lack of guests at the wedding.



[27] The Respondent contends that the IAD is presumed to have considered all of the evidence presented and may only refer to the evidence it deems important (*Canada (Citizenship and Immigration) v Sohail*, 2017 FC 995 (“*Sohail*”) at para 31). The Respondent further submits that there is no indication that the IAD ignored evidence that the marriage was genuine and that the Applicant failed to demonstrate any evidence that squarely contradicted the IAD’s findings.

[28] I disagree. In my view, I find that the IAD selectively considered the evidence, focused on details that were not well-founded, and failed to consider evidence that pointed to an opposite conclusion (*Sohail* at para 31; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17). For instance, included in the evidence was an affidavit from the Applicant’s adult children who state that their mother told them about her relationship with Mr. Gill a few weeks after meeting him. The affidavit expresses how the children’s initial apprehension about Mr. Gill’s intentions was assuaged once they spoke with their mother about the possibility of marriage:

From the way that our mother spoke about [Mr. Gill], it was very clear that they had built a bond with each other as they fit each other’s emotional and spiritual needs.

[29] I agree with the Applicant that the IAD placed too much weight on Mr. Gill’s TRV applications and his motivation to come to Canada. As aptly stated by my colleague Justice Barnes in *Tamber*: “Most individuals seeking to come to Canada are highly motivated to do so. This says little about whether a particular marriage is genuine” (at para 19). Simply because Mr. Gill made multiple attempts to visit Canada on a temporary basis does not signal that he married the Applicant for immigration purposes.

[30] A review of the evidence also shows extensive online communication and affectionate exchanges between the Applicant and Mr. Gill before they were married. In a statement from the Applicant, she writes that the couple chatted regularly online: “We discussed about family, friends, work, fitness, ideas, opinions, our past and every little thing that you can imagine.”

[31] Furthermore, I agree with the Applicant that the IAD’s finding that the police protection order was obtained to provide an excuse for the lack of family presence at the wedding is not justified. I find that the testimonies showed that the couple was concerned their decision to marry could spark an unpredictable response from Mr. Gill’s family. Specifically, Mr. Gill testified that he obtained the petition for a police protection order because he feared his family would disapprove of the marriage due to their significant age difference. I also find that the objective country condition evidence of violence from families in India towards couples who married under similar circumstances demonstrates that this fear was genuine and reasonable.

[32] Additionally, I agree with the Applicant that the IAD misunderstood the evidence with respect to the police protection order. The evidence in the certified tribunal record contains one document, which confirms the order was granted on February 28, 2019, and another document confirming the withdrawal of the police protection order on March 14, 2019, which aligns with when the Applicant left India. Only the latter was submitted with the Applicant’s record before the IAD, yet I find that it clearly states that the order is a withdrawal.

[33] In *Zhou*, at paragraph 48, my colleague Justice Norris stresses that a decision-maker must examine whether the development of a relationship makes sense in the context of the lives of the parties involved:

[48] While the speed with which a relationship develops can be a relevant consideration, it must be approached with care. Affairs of the heart seldom unfold fully rationally. There is no objective benchmark by which to determine whether a given relationship developed at the appropriate speed or not. Rather, a decision maker must determine whether the development of the relationship makes sense in the context of the lives of the parties in question and in the absence of an ulterior motive. The latter point is important because the party contending that the marriage was not entered into in bad faith has the difficult task of proving a negative – namely, that the marriage was not entered into primarily for an immigration purpose. This can usually be done only indirectly, by showing that it is not necessary to posit an ulterior motive to explain why the parties acted as they did.

[34] Given the evidence before the IAD, such as the extensive communication between the Applicant and Mr. Gill before their marriage, the statement from the Applicant's children, and the couple's hesitancy to involve their families in the wedding for fear that they would disapprove, I do not find that the IAD adequately accounted for the context of the Applicant and Mr. Gill's lives when analyzing the development of their relationship. I find the IAD's reasons only focused on certain aspects of the evidence and do not show a rational chain of analysis (*Vavilov* at para 85). I therefore find the decision to be unreasonable.

[35] Having found that the IAD reached an unreasonable conclusion with respect to the primary purpose of the marriage, it is unnecessary to address the reasonableness of the IAD's decision not to analyze the genuineness of the marriage under paragraph 4(1)(b) of the *IRPR*.

**V. Conclusion**

[36] For the reasons above, I find the IAD's decision is unreasonable. This application for judicial review is granted.

[37] No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-1997-21**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is granted. The decision is set aside and the matter returned back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1997-21

**STYLE OF CAUSE:** GURPREET KAUR BATTU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 16, 2021

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 14, 2022

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