

Federal Court



Cour fédérale

Date: 20230609

Docket: IMM-9174-21

Citation: 2023 FC 818

Ottawa, Ontario, June 9, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

SABA DILAWAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Dilawar, seeks review of an Immigration Appeal Division [IAD] decision of November 23, 2021, denying her spousal sponsorship appeal [Decision]. The IAD concluded Ms. Dilawar's spouse, Mr. Arshad, had misrepresented the date of his divorce from his first spouse.

[2] This Application for judicial review is granted on procedural fairness grounds.

I. Background

[3] Ms. Dilawar is a dual citizen of Pakistan and Canada. She married Mr. Arshad, a citizen of Pakistan, on March 21, 2015, and filed a spousal sponsorship application in February 2016.

[4] Mr. Arshad was previously married and claimed the marriage was dissolved by mutual consent in December 2013. He provided a copy of a Pakistani divorce certificate, which stated the divorce was effective on December 2, 2013, by mode of talaq [2013 divorce certificate]. Having lost the original copy, Mr. Arshad obtained a re-issued copy of this 2013 divorce certificate on August 25, 2015.

[5] During an interview with Immigration, Refugees and Citizenship Canada [IRCC] in Pakistan in 2017, Mr. Arshad was shown a copy of a divorce certificate that showed the effective date of divorce was April 21, 2015 [2015 divorce certificate], which was one month after Mr. Arshad and Ms. Dilawar were married.

[6] Following this interview, IRCC contacted the issuing authority for the 2013 divorce certificate for clarification on the mode of divorce and any other available documentation. The issuing authority responded there was no record of the 2013 divorce certificate based on the document number and that the address listed was outside of their area of responsibility.

[7] Mr. Arshad received a procedural fairness letter, stating the reviewing Visa Officer had concerns that the 2013 divorce certificate submitted in his spousal sponsorship application was

fraudulent. Ms. Dilawar and Mr. Arshad responded to the letter and provided a number of documents, including a copy of the Decree Absolute from the Manchester Family Court, annulling the marriage in the United Kingdom [UK] dated November 2014, an Affidavit explaining the steps taken by Mr. Arshad to divorce his ex-wife, and a copy of the divorce deed dated August 26, 2013. The divorce deed was used as proof of divorce to obtain the 2013 divorce certificate.

[8] In August 2019, the spousal sponsorship application was denied on the basis that the 2013 divorce certificate was a misrepresentation. Mr. Arshad was found to be inadmissible to Canada for five years. Ms. Dilawar appealed the decision to the IAD.

[9] Upon receiving the appeal record, Ms. Dilawar and Mr. Arshad discovered IRCC had received a poison pen letter from Mr. Arshad's ex-wife, claiming they were still married when Mr. Arshad married Ms. Dilawar. The poison pen letter included a copy of the 2015 divorce certificate that was shown to Mr. Arshad at the interview. The appeal record also included the Visa Officer's Global Case Management System notes, which noted there were visible signs of alteration on the 2013 divorce certificate.

[10] The IAD hearing was held on April 6, 2021, and Ms. Dilawar and Mr. Arshad both testified. Mr. Arshad addressed the inconsistencies in the poison pen letter, including that his ex-wife claimed not to know of the 2013 Pakistan divorce, yet she sought an annulment of the marriage in the UK in 2014. The UK Decree Absolute names the ex-wife as the petitioner. Regarding the IRCC's attempt to verify the 2013 divorce certificate, Mr. Arshad testified he had

contacted the issuing authority himself and was told no one from IRCC had contacted them about the 2013 divorce certificate.

[11] In his submissions to the IAD, Mr. Arshad provided a copy of a Divorce Registration Certificate, issued in November 2020, from a Pakistani civil court, which declared that the effective date on the 2013 divorce certificate was correct. After the hearing, the IAD asked for additional documents concerning the Divorce Registration Certificate, which were provided. The Respondent also submitted the original copy of the 2013 divorce certificate to the IAD and provided Ms. Dilawar and Mr. Arshad with a scanned copy.

A. *Decision Under Review*

[12] The IAD dismissed Ms. Dilawar's appeal on November 23, 2021. The IAD determined that Mr. Arshad was excluded as a member of the Family Class because he was not legally divorced when he married Ms. Dilawar.

[13] The Decision begins by outlining the concerns the IAD had with the 2013 divorce certificate. First, Mr. Arshad had not provided the original document, as directed by IRCC. The copy provided was issued in 2015, as Mr. Arshad allegedly lost the original in a move between the UK and Pakistan and his lawyer told him to get a new one from the issuing authority. The IAD did not accept his explanation as reasonable.

[14] The second issue were the signs of alteration that had been noted by the Visa Officer. The 2013 divorce certificate appeared to have signs of altered dates, which seemed to reflect the

dates on the 2015 divorce certificate. The IAD reviewed the original 2013 divorce certificate and found the Visa Officer's descriptions were reasonable. The IAD noted traces of numbers for the date of divorce, date of failure of reconciliation, and date of effectiveness on both the English and Urdu sides of the 2013 divorce certificate. The IAD concluded no reasonable explanation for the signs of alteration had been provided.

[15] Third, the issuing authority did not have a record of the divorce. Mr. Arshad argued his ex-wife's family may have bribed the authority, or that the geographic boundary for the authority may have changed after an election. The IAD did not accept Mr. Arshad's explanations, noting he was not an expert on registration of civil status in Pakistan.

[16] Fourth, the 2013 divorce certificate stated the mode of divorce was talaq, but Mr. Arshad testified the divorce was done by mutual consent after he pronounced talaq orally three times. The IAD found it was reasonable to believe that had the divorce been done by mutual consent, the divorce certificate would reflect the correct mode, especially given that Mr. Arshad was represented by a lawyer during the proceeding. The IAD found that neither Mr. Arshad's testimony, nor the letter from his lawyer explaining the divorce procedure reasonably explained the discrepancy in mode of divorce on the certificate.

[17] There was also a discrepancy relating to the location where the deed of divorce was signed. The mutual deed of divorce states it was made at Rahim Yar Kahn in 2013, but Mr. Arshad was living in the UK at the time. He testified the divorce deed was signed in Manchester with one family in one room and the other in another room. The IAD found

Mr. Arshad had not reasonably explained this discrepancy, so the divorce deed was given no evidentiary weight.

[18] The IAD also found the fact that Mr. Arshad was unaware of the annulment proceeding initiated by his ex-wife in the UK raised concerns about his credibility regarding having obtained a mutual divorce while he was in the UK.

[19] Lastly, the IAD found the November 2020 Divorce Registration Certificate from the Pakistani civil court did not establish that Mr. Arshad followed the talaq process. This Divorce Registration Certificate declared that the effective date indicated on the 2013 divorce certificate was correct and therefore cancelled the 2015 divorce certificate. However, the IAD found a number of discrepancies with the Divorce Registration Certificate.

[20] The Divorce Registration Certificate was initially issued in October 2020. In Mr. Arshad's written submissions to the Pakistani civil court, the divorce certificate number used identified both the 2013 divorce certificate and the 2015 divorce certificate. Further, the issue date for the 'cancelled' certificate is August 25, 2015, which was in fact the issue date for the 'correct' 2013 divorce certificate. In short, the identification of the 'cancelled' certificate is incorrect.

[21] After the October 2020 judgment of the Rahim Yar Khan civil court was released, Mr. Arshad filed an application to correct the date of the divorce certificate. The amended Divorce Registration Certificate was issued in November 2020. The IAD's concern with the

amended Divorce Registration Certificate was that there was no evidence that a sworn statement was produced as proof of the corrections to be made.

[22] The IAD found the presumption that official documents issued by a foreign government are valid was rebutted. The IAD afforded no evidentiary weight to the amended November 2020 Divorce Registration Certificate. Further, the IAD found the Certificate did not resolve the issue of the alleged alterations to the 2013 divorce certificate, or the incorrect mode of divorce.

[23] Therefore, the IAD concluded that Ms. Dilawar had not met her burden of proof to establish that Mr. Arshad was legally divorced when he married her. As such, Mr. Arshad was excluded from the Family Class. The IAD found there was no need to determine inadmissibility for misrepresentation and that it lacked jurisdiction to consider humanitarian and compassionate grounds.

II. Issue and Standard of Review

[24] In my view, the determinative issue is whether there was a denial of procedural fairness, given the findings made by the IAD in regards to the 2013 and the 2020 divorce documents.

[25] The standard of review for the procedural fairness issues is correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69).

III. Analysis

[26] The procedural fairness issues relate to the IAD's findings on the divorce documents, which were made without affording Ms. Dilawar or Mr. Arshad an opportunity to respond to the concerns raised with the documents.

A. *2013 Divorce Certificate*

[27] With respect to the 2013 divorce certificate, the IAD found that “[n]o reasonable explanation for signs of alterations was provided to the tribunal”.

[28] Ms. Dilawar argues neither she, nor her husband, nor their counsel were given the opportunity to inspect the original copy of the 2013 divorce certificate after the allegation of alteration was raised by the IAD. Ms. Dilawar argues that as the alterations were not put to Mr. Arshad in any manner at the IAD hearing, this amounts to a breach of procedural fairness.

[29] The Respondent argues there is no breach of procedural fairness as the 2013 divorce certificate was provided by Mr. Arshad himself, and he had the opportunity to review the document before it was submitted.

[30] Mr. Arshad did provide the original copy to the IRCC, who forwarded it to the IAD. However, there is no indication that he was shown a copy of the certificate, with the alleged

alterations highlighted, during the IAD process. In my view, fairness required that Mr. Arshad be given the opportunity to address the IAD's concerns with the document.

[31] At the hearing, Mr. Arshad was asked a number of questions by the Respondent about the 2013 divorce certificate. He was asked about the arbitration period with respect to the talaq and the address on the document. However, he was not asked about the alleged alterations.

[32] Further, it is not clear from the transcript that the IAD member shared the Visa Officer's concern about the alleged alterations to the certificate at the hearing. The IAD requested the original 2013 divorce certificate be submitted *after* the hearing concluded and then conducted its own examination of the 2013 divorce certificate.

[33] The failure of the IAD to put the alleged alterations to Mr. Arshad is not a fair process. He was not asked about these markings, why they were there, or what they might mean.

[34] Given the findings made by the IAD on the 2013 divorce certificate, and considering the evidentiary weight placed on this document by the IAD, procedural fairness dictates that these concerns should have been put to Mr. Arshad directly.

B. *2020 Divorce Registration Certificate*

[35] Ms. Dilawar submits the IAD's concerns with the 2020 Divorce Registration Certificate were also not raised with her or Mr. Arshad. Ms. Dilawar argues that had the IAD put their concerns about the Divorce Registration Certificate to Mr. Arshad, he could have pointed to the

evidence in the Pakistani civil court record which confirmed that the judge reviewed the record before amending the Certificate.

[36] The Respondent argues a decision-maker is not required to give an applicant the opportunity to respond to weaknesses in the evidence they have submitted (*Singh v Canada (Citizenship and Immigration)*, 2016 FC 509 at paras 31-36).

[37] However, in my view the IAD made a credibility finding on this document, having found the presumption of authenticity was rebutted. The failure to address concerns about the authenticity of documents with an applicant can be a breach of procedural fairness. In *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264, Justice Bédard stated:

[25] Nevertheless, a duty to provide an applicant with the opportunity to respond to an officer's concerns may arise when the officer is concerned with the credibility, the veracity, or the authenticity of the documentation provided by an applicant as opposed to the sufficiency of the evidence provided.

[38] Further, challenging the validity of the 2020 Pakistani Divorce Registration Certificate was also a new issue raised by the IAD *after* the hearing. The document was not before the Visa Officer, as it was issued after the original refusal decision. The challenge to the authenticity of this document was not an issue Ms. Dilawar or Mr. Arshad were aware of going into the IAD hearing.

[39] The IAD did ask Ms. Dilawar and Mr. Arshad for more information about the 2020 Divorce Registration Certificate, but it does not appear there was any indication or notice given

to them that the IAD was questioning the authenticity or genuineness of the document. On June 2, 2021, the IAD sent a directive to the parties that stated:

The tribunal requests that the Appellant provides the original (paper version) Divorce certificate, number V313067-15-0008, issued 25-08-2015 submitted with the sponsorship application (see p.121 of the Appeal Record) and the documents submitted by the Applicant with the petition for judgement (including the affidavit) rendered 24 October 2020 by Ejaz Ahmad civil judge class-II.

The Appellant has until June 16, 2021 to provide the required documents.

[40] Counsel for Ms. Dilawar asked for clarification if the originals for the documents submitted to the Pakistani civil court were required and the IAD confirmed only the 2013 divorce certificate needed to be an original. It appears that 54 pages of documents were sent to the IAD on behalf of Ms. Dilawar in response to this request. It is not clear from the certified tribunal record [CTR] what was included in those documents, as they were not attached to the email in the CTR.

[41] The IAD did not inform Ms. Dilawar of the concerns over the 2020 Pakistani Divorce Registration Certificate and did not provide her or her husband an opportunity to respond. The IAD asked for the documents submitted to the Pakistani civil court, but not for submissions addressing the inconsistencies the IAD found in the Pakistani court record.

[42] Ms. Dilawar and Mr. Arshad should have been given the opportunity to respond to the IAD's concerns about the 2020 Pakistani Divorce Registration Certificate, which arose after the hearing concluded. In my view, there was a breach of procedural fairness.

IV. Conclusion

[43] This Application for judicial review is granted as the procedure followed by the IAD was unfair to Ms. Dilawar and Mr. Arshad.

[44] There is no question for certification.

JUDGMENT IN IMM-9174-21

THIS COURT'S JUDGMENT is that:

1. This Application for judicial review is granted and the decision of the Immigration Appeal Division dated November 23, 2021, is quashed and shall be reconsidered by a differently constituted panel; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9174-21

STYLE OF CAUSE: DILAWAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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