

Federal Court



Cour fédérale

Date: 20240718

Docket: IMM-2579-23

Citation: 2024 FC 1124

Ottawa, Ontario, July 18, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

PIUS KOFI ZOMBO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant is a Canadian citizen. On May 21, 2019, while in India, he married Nancy Chopra, an Indian Citizen. They got married in a Sikh religious ceremony. Following the marriage, the Applicant applied for a Permanent Resident Visa for Ms. Chopra to come to

Canada as his spouse and a member of the family class as per paragraph 117(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR 2002/227 [IRPR].

[2] To establish the validity of the marriage, the Applicant had to demonstrate that the Sikh ceremony was valid under the laws of India, being the jurisdiction where the marriage took place. The first decision-maker, a visa officer in India, denied the visa on the grounds that the marriage was not genuine. On appeal, the Immigration Appeal division (IAD), determined that the marriage was not valid. The Applicant seeks judicial review of the IAD Decision.

[3] The Applicant represents himself on this judicial review and just before the scheduled hearing time, he telephoned the Court to advise that he had car trouble and would not arrive in time for the hearing. As permitted by Rule 38 of the *Federal Court Rules*, SOR/98-106, the hearing proceeded in his absence. Legal counsel for the Respondent made submissions and I advised that I would render my decision based upon the Applicant's written submissions, and Respondent's written and oral submissions.

[4] The only issue is if the IAD made a reasonable decision when it concluded that the Applicant's marriage to Ms. Chopra was not valid.

II. Analysis

[5] For marriages that take place outside of Canada, section 2 of IRPR defines a valid marriage as one that is valid both under the laws of the jurisdiction where it took place and under Canadian law. As the IAD observed, formal validity is determined by the laws of the jurisdiction

where the marriage was celebrated. Further, foreign law must be proven by the party who is relying on it.

[6] As this marriage took place in India, the IAD considered the potential Indian law that might apply and found that the only relevant legislation was the *Special Marriage Act, 1954* [SMA]. In considering the SMA, the IAD noted that the Applicant could not register the marriage under subsection 15(f) of the SMA as he had not been residing in India for at least 30 days before the marriage. The IAD found that section 42 of the SMA, the ‘saving provision’ could also not validate this marriage since the Applicant did not explain how it applied to his marriage and how his marriage was legally valid if not registered under the SMA. The IAD concluded that the Applicant did not demonstrate that his marriage was legally valid as it was not registered under the SMA.

[7] The IAD considered the other documents relied upon by the Applicant as proof of the marriage including the Applicant’s address being listed as “care of” Ms. Chopra and Ms. Chopra being listed as a spouse in the Applicant’s 2022 passport. However, the IAD reasonably concluded that such evidence does not demonstrate the legal validity of the marriage in India.

[8] In his written submissions, the Applicant does not challenge the applicability of the SMA to his circumstances; however, he points to various decisions from the Indian courts to support his argument that his marriage should be considered valid. Even so, on judicial review, the issue for this Court is if the Decision is reasonable based upon the information that was considered by

the IAD. Here, the IAD considered the relevant legislation and found that the non-registration of their ceremony was determinative.

[9] The Applicant relies upon the Andhra High Court decision of *Joyce Sumanthi v Robert Dickson Brodie*, February 17, 1982, AIR 1982 AP 389 [*Sumanthi*]. However, as noted by the IAD, the facts in that case differ from the Applicant's circumstances. In *Sumanthi*, the couple married in a foreign jurisdiction, and their marriage was solemnized in that foreign jurisdiction. This allowed the marriage to be recognized under the SMA and the *Foreign Marriage Act, 1969* [FMA]. Here, Ms. Chopra is a citizen of India and married in India; therefore, the marriage does not meet the definition of a "foreign marriage" in the FMA.

[10] Overall, the Applicant has neither identified any error with the IAD Decision nor any evidence that was overlooked. Based upon the information before the IAD, it was reasonable for the IAD to find that non-registration of the marriage under the applicable legislation, the SMA, was determinative of the issue of the marriage's validity. I would further note that it was not necessary for the IAD to consider the genuineness of the marriage as the Applicant was first required to establish that it was a valid marriage.

III. Conclusion

[11] This judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-2579-23

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

: IMM-2579-23

STYLE OF CAUSE: ZOMBO V THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 4, 2024

JUDGMENT AND REASONS: MCDONALD J.

DATED: JULY 18, 2024

APPEARANCES:

Pius Zombo (ON HIS OWN BEHALF)

Nicole John FOR THE RESPONDENT

SOLICITORS OF RECORD:

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