Date: 20071026

Docket: IMM-1473-07

Citation: 2007 FC 1108

Ottawa, Ontario, October 26, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

ALBERT ROOPCHAND

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A visa officer determined that Albert Roopchand's marriage to Sharmin Richards was not genuine and that it was entered into for the purpose of acquiring status under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act). Ms. Richards' sponsored application to become a permanent resident was, therefore, rejected on the ground that her marriage fell within the exclusionary provision of section 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). An appeal was taken to the Immigration Appeal Division of the Immigration and Refugee Board (IAD or Board), but the IAD dismissed the appeal because it found

that Mr. Roopchand had not met the onus upon him to demonstrate that the marriage was genuine or was not entered into primarily for the purpose of acquiring status under the Act.

[2] This application for judicial review of the negative decision of the IAD is dismissed because Mr. Roopchand has not demonstrated that the factual findings of the Board were patently unreasonable.

[3] Section 4 of the Regulations is as follows:

4. For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.	4. Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait, le partenaire conjugal ou l'enfant adoptif d'une personne si le mariage, la relation des conjoints de fait ou des partenaires conjugaux ou l'adoption n'est pas authentique et vise principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi.

[4] The section raises questions of fact with respect to the intent and purpose of the sponsored spouse. As a practical matter, a person's intent is not likely to be successfully tested by a grilling cross-examination designed to elicit an admission of fraud or dishonesty. Rather, in the usual case, the trier of fact will draw inferences from such things as inconsistent or contradictory statements made by the parties, the knowledge the parties have about each other and their shared history, the nature, frequency and content of communications between the parties, any financial support, and any previous attempt by the applicant spouse to gain admission to Canada.

[5] Questions of intent and purpose are questions of fact, determined by the IAD after it has seen, or at least heard, the evidence of the parties. For that reason, this Court has held that such findings are reviewable on the most deferential standard of review: patent unreasonableness. See, for example, *Khella v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1696 at paragraph 12.

[6] In the present case, the IAD relied upon inconsistencies between the evidence of Mr. Roopchand and his wife and one contradiction within the evidence of his wife. While the Board may have been a little loose or flowery in its language when it referred to "the irreconcilable testimonies of the appellant and the applicant", I am satisfied that nothing turns on this language. I am equally satisfied that, contrary to Mr. Roopchand's submissions, the IAD was entitled to rely, as it did, upon the following material inconsistencies in the evidence:

- In the sponsored/spouse questionnaire, Ms. Richards stated that her first contact with Mr. Roopchand was by telephone in 2001. In the same questionnaire, she also stated that she first met Mr. Roopchand in 2004 and that at that time "we had a social conversation and exchanged telephone [numbers]". At the hearing, Mr. Roopchand testified that their first telephone contact was in 2002.
- Mr. Roopchand testified that he believed his wife is a Baptist and that her mother is Hindu. Ms. Richards testified that she is a member of the Full Gospel Church and that her mother is Christian.
- Ms. Richards had two abortions during the course of their relationship. Mr. Roopchand testified that his wife paid for both abortions and that he then

reimbursed her by sending her 10,000 Guyanese dollars for each abortion.

Ms. Richards testified that the first abortion cost 8,000 Guyanese dollars, the second 10,000 Guyanese dollars, and that on both occasions she used money sent by her husband to pay the bill (that is, her husband did not reimburse her).

- Mr. Roopchand testified about going to restaurants, bars and nightclubs with his wife. He testified that his drink of choice was beer while Ms. Richards testified that he liked drinking vodka and coconut water (sometimes with orange juice).

[7] In addition to those inconsistencies, the IAD also relied upon its findings that:

- Mr. Roopchand's lack of knowledge with respect to his wife's abortions was not consistent with a genuine spousal relationship, particularly in light of his evidence that they spoke daily by telephone. With respect to the first abortion,

  Mr. Roopchand did not know when the abortion was performed, the name of the hospital where the abortion was performed, or the name of the treating physician. With respect to the second abortion, he did not know the duration of the pregnancy, the date of the abortion, the name of the treating physician, or the name of the hospital.
- Mr. Roopchand and his wife had no knowledge of each other's banks.
- Mr. Roopchand did not know the name of his wife's supervisor at work and was unfamiliar with her co-workers.

- There was limited documentary evidence supporting contact between Mr. Roopchand and his wife from 2004 to 2006, and no evidence of contact in 2001, 2002, and 2003.

[8] I find that all of those findings were supported by evidence before the IAD.

[9] The IAD did make one questionable inference and, on one occasion, it did misstate the evidence before it.

[10] With respect to the questionable inference, the Board did not find it to be credible that Mr. Roopchand proposed to Ms. Richards prior to August 5, 2004, but they only decided to marry in January of 2005. Without more, the effluxion of time between proposal and acceptance is not necessarily incredible. I am unable to find, however, any indication in the Board's reasons that this was a material finding. I am satisfied that the decision would not have been different in the absence of this inference.

[11] With respect to the misstatement of evidence in its reasons, the IAD stated that Mr. Roopchand drank seven or eight drinks a day. In fact, he testified that he had seven or eight drinks a week. Again, I do not find this error to be material. What was relevant and material was the parties' evidence as to what he drank.

[12] In addition to raising issues with respect to the Board's findings of inconsistencies in the evidence, Mr. Roopchand asserts that the Board erred by "sequentializ[ing] the evidence, rejecting

as probative the many pictures on the Record of the couple together at outings and the wedding as well as evidence of financial support". It is alleged that the Board considered only some of the evidence and then rejected other relevant evidence without considering all of the evidence.

[13] In my view, the Board did not err as alleged. I am satisfied that the Board considered all of the evidence before it but then concluded that, in light of the inconsistencies in the evidence of the parties, their lack of knowledge of certain facts and the scarcity of evidence confirming contact between the parties, the photographs and the evidence that Mr. Roopchand sent Ms. Richards between $1,600.00 and $1,700.00 since 2004 were incapable of establishing the genuineness and *bona fide* purpose of the marriage. That was not a patently unreasonable finding.

[14] In conclusion, the Board's findings of fact were not patently unreasonable and they supported the IAD's conclusion that Mr. Roopchand had not met the onus upon him to demonstrate that the marriage was genuine or not entered into primarily for the purpose of acquiring status under the Act. The application for judicial review is therefore dismissed.

[15] Mr. Roopchand proposed certification of the following question:

> Is it necessary for this Court on judicial review to differentiate between the standard of review to determine whether the tribunal under review has made an error and the standard of reversal to determine whether the decision under review should be set aside once this Court has determined that an error has been made?

[16] This question does not arise on this determination of the application for judicial review. No question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

"Eleanor R. Dawson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1473-07
STYLE OF CAUSE:	ALBERT ROOPCHAND, Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION, Respondent
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APPEARANCES:

DAVID MATAS	FOR THE APPLICANT
MELISSA DANISH	FOR THE RESPONDENT

SOLICITORS OF RECORD:

DAVID MATAS BARRISTER AND SOLICITOR WINNIPEG, MANITOBA	FOR THE APPLICANT
JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT