

**Date: 20030220**

**Docket: IMM-5268-01**

**Neutral citation: 2003 FCT 186**

**Between:**

**Youssef BERCHID, c/o Étude Kenane,  
630 boul. René-Lévesque Ouest, suite 1640,  
Montréal, Quebec H3B 1S6**

**Plaintiff**

**- and -**

**The Minister of Citizenship  
and Immigration,  
c/o Department of Justice Canada, Complexe Guy-Favreau  
200 boul. René-Lévesque Ouest, Tour Est, 5<sup>e</sup> étage,  
Montréal, Quebec H2Z 1X4**

**Defendant**

**REASONS FOR ORDER**

**PINARD J.**

[1] The plaintiff is seeking judicial review of the decision by which Louis Saint-Arnaud, a visa officer (“the officer”) with the Canadian Embassy in Paris, concluded on October 16, 2001, that the plaintiff did not meet the necessary requirements for immigrating to Canada as he was part of an inadmissible class of persons described in s. 19(2)(a.1)(ii) of the *Immigration Act*, R.S.C. 1985, c. I-2 (“the Act”).

[2] In his letter of refusal the officer explained:

[TRANSLATION]

On March 25, 1998, you committed an act in the U.S. which was a matter for the courts, in that you married in order to gain admission to the U.S. as an immigrant. This is an offence in the country where it was committed and, if it were committed in Canada, would be an offence punishable by imprisonment for a term not exceeding 10 years, under s. 292(1) of the Canada *Criminal Code*.

[3] Section 292(1) of the *Criminal Code*, R.S.C. 1985, c. C-34, reads:

**292.** (1) Every person who procures or knowingly aids in procuring a feigned marriage between himself and another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

**292.** (1) Quiconque obtient ou sciemment aide à obtenir un mariage feint entre lui-même et une autre personne est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans.

[4] The plaintiff submitted that the officer had to request a written explanation of his version of the circumstances of the marriage in the U.S. in order to be able to render a fair and proper decision. The plaintiff accordingly argued that there had been a breach of the rules of natural justice.

[5] It should be noted that it is for anyone applying for permanent residence to prove that being admitted to Canada does not contravene the Act (s. 8(1)).

[6] In the case at bar, the officer did everything required to ensure that the plaintiff had an opportunity to provide documents and information connected with his application, as appears from the officer's affidavit and the notes recorded on the computerized immigration information system. In particular, the officer sent a letter dated January 8, 2001, specifically asking the plaintiff for explanations about the [TRANSLATION] "American judgment" regarding him, that is probably the document titled "Order of the Immigration Judge" dated March 16, 2000. In response to this missive, the plaintiff has still provided no explanation, simply sending the documents.

[7] In my opinion, there has been no breach of natural justice. The officer made no error when he found, on a burden less than the balance of probabilities and greater than mere suspicion (*Chiau v. Canada (M.C.I.)*, [2001] 2 F.C. 297), that there were reasonable grounds to believe that the plaintiff had committed an act in the U.S. which, if it were committed in Canada, would be an offence punishable by a term not exceeding 10 years, namely a feigned marriage. The officer based his decision on the evidence presented, including reliable documents filed by the plaintiff, and several others from the U.S. government, a trustworthy source. I find no manifest and overriding error insofar as the assessment of the facts is concerned.

[8] For these reasons this Court's intervention is not warranted and the application for judicial review is dismissed.

“Yvon Pinard”

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Judge

OTTAWA, ONTARIO  
February 20, 2003

Certified true translation

Suzanne M. Gauthier, C. Tr., LL.L.

**FEDERAL COURT OF CANADA  
TRIAL DIVISION**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**FILE:** IMM-5268-01

**STYLE OF CAUSE:** Youssef BERCHID v. The Minister of  
Citizenship and Immigration

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 7, 2003

**REASONS FOR ORDER BY:** Pinard J.

**DATED:** February 20, 2003

**APPEARANCES:**

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Guy Lamb FOR THE DEFENDANT

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