

Federal Court



Cour fédérale

Date: 20110407

Docket: IMM-4001-10

Citation: 2011 FC 429

Montréal, Quebec, April 7, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

ANGELO MANCUSO

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision rendered on June 21, 2010 by the *Immigration Appeal Division* (IAD) of the *Immigration and Refugee Board* (IRB), which allowed Angelo Mancuso's appeal.

[2] For the reasons outlined below, the application for judicial review shall be allowed.

[3] The Respondent, a Canadian citizen, married Ms. Perla Massiel Urbaez Garcia (Perla), a citizen of the Dominican Republic on April 25, 2008.

[4] The Respondent and Perla met when the Respondent was vacationing in the Dominican Republic in 2007. Although they met for the first time in 2007, their romantic relationship began in January 2008. They got engaged in February 2008 and married in April 2008. Perla was 19 years old and the Respondent was almost 59.

[5] The Respondent filed an application to sponsor Perla as a permanent resident; it was refused on September 24, 2009.

[6] The ground of refusal was that Perla was a person described in section 4 of the *Immigration and Refugee Protection Regulations (IRPR)* in that the marriage to the Respondent was not genuine and was entered primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act (IRPA)*.

[7] On appeal, the IAD concluded that the respondent's wife married him for the purpose of acquiring the status of permanent resident but determined that the spouses were committed to the relationship and consequently allowed the appeal.

[8] The IAD relied on the words of Shari A. Stein of the IAD in *Mann (Jagdeep Kaur Mann v The Minister of Citizenship and Immigration (TA-3-19094)*, August 5, 2005) at para 13:

Section 4 also creates a two-pronged test and not meeting either prong will suffice to allow the appeal. In particular with respect to

the second prong, the intentions of the applicant are still important, as it is the applicant who typically has the most to gain from an immigration perspective. However, with respect to the first prong - whether the marriage is genuine - in my view, it is the intentions of both the appellant and applicant that are of equal and overlapping legal significance. By focusing the legal inquiry on the broad question of whether the marriage is genuine, I believe Parliament intended a shift away from a narrow and potentially myopic focus on the intentions of the applicant at the time of the marriage. This allows for a broader and more global assessment. The focus can be on the shared intentions of both parties to the relationship – as adduced by the evidence in its entirety at the *de novo* hearing. [...]

[9] The IAD stated that in the present case, it is obvious that an exit from the Dominican Republic is attractive to Perla. It went so far as to state that she married the Respondent for the purpose of acquiring the status of a permanent resident and that “had he been a late fifty-year-old diabetic citizen of the Dominican Republic, she would have shown him no interest” (paragraph 9 of the decision).

[10] However, despite these findings, it noted that the couple will still enjoy a symbiotic relationship. The IAD understood that Mr. Mancuso benefits from enjoying the companionship of an attractive younger partner while Perla benefits from experiencing a level of material comfort she could have never experienced as the daughter of a day labourer.

[11] The Applicant submits that though the standard of review for the factual finding by the IAD is one of reasonableness, the application of s. 4 of the IRPR has to be interpreted on a standard of correctness (*Ma v Canada (Citizenship and Immigration)*, 2010 FC 509, para 26 and 27).

[12] With regards to the adequacy or sufficiency of the reasons, the Applicant contends that it is a question of procedural fairness and is reviewable on a standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, para 43).

[13] My analysis is focused mainly on the adequacy or sufficiency of the reasons provided by the IAD; therefore, I will apply the standard of correctness.

[14] The Applicant submits that the IAD failed to provide reasons that would even come near the level of adequacy described by the Court of Appeal in *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158 at para 16:

[16] ...

(a) *The substantive purpose.* At least in a minimal way, the substance of the decision must be understood, along with why the administrative decision-maker ruled in the way that it did.

(b) *The procedural purpose.* The parties must be able to decide whether or not to invoke their rights to have the decision reviewed by a supervising court. This is an aspect of procedural fairness in administrative law. If the bases underlying the decision are withheld, a party cannot assess whether the bases give rise to a ground for review.

(c) *The accountability purpose.* There must be enough information about the decision and its bases so that the supervising court can assess, meaningfully, whether the decision-maker met minimum standards of legality. This role of supervising courts is an important aspect of the rule of law and must be respected: *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220; *Dunsmuir, supra* at paragraphs 27 to 31. In cases where the standard of review is reasonableness, the supervising court must assess “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir, supra* at paragraph 47. If the supervising court has been prevented from assessing this because too little information has been provided, the reasons are inadequate: see, e.g., *Canadian Association of Broadcasters, supra* at paragraph 11.

(d) *The “justification, transparency and intelligibility” purpose:* *Dunsmuir, supra* at paragraph 47. This purpose overlaps, to some extent, with the substantive purpose. Justification and intelligibility are present when a basis for a decision has been given, and the basis is

understandable, with some discernable rationality and logic. Transparency speaks to the ability of observers to scrutinize and understand what an administrative decision-maker has decided and why. In this case, this would include the parties to the proceeding, the employees whose positions were in issue, and employees, employers, unions and businesses that may face similar issues in the future. Transparency, though, is not just limited to observers who have a specific interest in the decision. The broader public also has an interest in transparency: in this case, the Board is a public institution of government and part of our democratic governance structure.

[15] More specifically, the applicant argues that the IAD's reasons clearly fail to meet at least two of the four purposes they should serve: the "accountability" and the "justification, transparency and intelligibility". He contends that the failure to discuss major contradictions and important factors and the lack of a proper analysis of the evidence by the IAD also serve to demonstrate that the reasons do not fulfill their purposes.

[16] As such, the Applicant states that the IAD's decision is based on conclusions that were reached in a perverse and capricious manner and without regard for the material before it, and that it cannot be sustained by a reasonable interpretation of the evidence.

[17] The Respondent, on the other hand, underscores that although the IAD did not provide lengthy detailed reasons, it did provide sufficient reasons based on the evidence and testimony to enable a sufficient justification for its conclusion that the parties have a symbiotic relationship.

[18] After a careful analysis of the evidence and the reasons provided by the IAD, I find that the omission to discuss several contradictions, such as: when the couple met, their reacquaintance in 2008, the length of their courtship, their intentions concerning having children and the genuineness of the marriage renders the reasons insufficient and inadequate.

[19] The Court's intervention is warranted.

[20] The parties did not propose questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is remitted back for redetermination by a different decision-maker. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4001-10

STYLE OF CAUSE: MCI v ANGELO MANCUSO

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 6, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** BEAUDRY J.

DATED: April 7, 2011

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