

Federal Court



Cour fédérale

**Date: 20121001**

**Docket: IMM-1757-12**

**Citation: 2012 FC 1135**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, October 1, 2012**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**KISSIMA CHEIKHNA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by the Immigration Appeal Division (the “IAD”) of the Immigration and Refugee Board, dated January 31, 2012, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). The IAD dismissed the applicant’s appeal from the refusal of the application for permanent residence made by Laalah Yacouba Tandia (“Ms. Tandia”) as a member of the family class on the ground that the wedding was not solemnized in accordance with the requirements of Mauritanian law.

## **I. Facts**

[2] The applicant has been a permanent resident in Canada since April 20, 2005, and is originally from the Islamic Republic of Mauritania, like Ms. Tandia. The applicant met Ms. Tandia on December 6, 2006 in Mauritania and apparently asked her to marry him on December 25, 2006. The couple was married by proxy on October 17, 2007 in Kaédi, Mauritania, while Mr. Cheikhna was living in Canada.

[3] The applicant made an application to sponsor Ms. Tandia. On March 12, 2009, an immigration officer at the Canadian Embassy in Abidjan informed Ms. Tandia by letter that her application for permanent residence had been refused. The reason invoked was that the relationship between Mr. Cheikhna and Ms. Tandia was not genuine and had been entered into primarily for the purpose of acquiring status. The applicant appealed to the IAD.

[4] During the hearing, the Minister filed a motion to add a second ground of refusal, namely, that the marriage did not comply with Mauritanian law. The IAD proceeded on the scheduled date, but granted additional time for the appellant to complete his documentary evidence. The appeal was dismissed in a decision rendered on January 31, 2012.

## **II. Decision under review**

[5] The IAD dismissed the applicant's appeal on the sole ground that couple's marriage failed to meet the requirements of Mauritanian law, which is contrary to section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRPR"). Having determined that the marriage was not valid under Mauritanian law, the IAD found that it was not necessary to deal with the

second ground raised by the Minister, namely, the genuineness of the relationship between the spouses.

[6] First, the IAD was not satisfied, based on the evidence adduced, that marriage by proxy is authorized under Mauritanian law. The IAD, relying on *Quao v Canada (Minister of Citizenship and Immigration)*, 2000 CarswellNat 1682 at paragraph 31, 2000 CanLII 15954 (FC) (*Quao*), noted that the onus is on the appellant to show, on a balance of probabilities, that this form of celebrating a marriage is valid, because foreign law is not within the general knowledge of the panel.

[7] Second, the IAD found that even if the marriage by proxy was legal, the appellant had not discharged his burden of proving that the marriage had in fact been solemnized in that manner. The appellant did not submit a proxy document in his evidence. Neither the excerpt from the registry of marriage certificates nor the document entitled “Acte de mariage” make any reference to the presence of a proxy representing Mr. Cheikhna at the time of the marriage or to a sworn statement by such a proxy. The IAD noted that appearance of authenticity of a document issued by a foreign state creates only a presumption of validity, which may be rebutted.

### **III. Applicant’s submissions**

[8] The applicant argues that the IAD drew an unreasonable conclusion when it determined that the applicant had not discharged his burden of proof and had failed to demonstrate that marriage by proxy was legal in Mauritania and that the marriage had been solemnized according to the requirements of Mauritanian law.

[9] The applicant submits that the IAD erred by initially determining that the marriage certificate did not contain all of the elements required by the Personal Status Code and by subsequently finding that, if there was a failure to comply, this would render the marriage invalid under Article 49 of the Personal Status Code, because the marriage certificate is not a constituent element of the marriage.

#### **IV. Respondent's submissions**

[10] The respondent argues that the IAD made a reasonable finding by determining that the applicant had failed to demonstrate that his marriage was valid under Mauritanian law. The documentary evidence adduced by the applicant does not specifically deal with the issue of whether marriage by proxy is valid under Mauritanian law. The applicant presented no documentary evidence or clear expertise with respect to the legality of marriage by proxy under Mauritanian law, nor did he submit any proxy documents.

[11] Furthermore, the IAD validly determined that the marriage was void, given that article 49 of the Personal Status Code stipulates that the absence of one of the constituent elements of a marriage, in this case the presence of one of the spouses, renders it void.

#### **V. Issue**

[12] Did the IAD err in determining that the applicant's marriage by proxy failed to meet the requirements of Mauritanian law, which is contrary to section 2 of the IRPR?

**VI. Standard of review**

[13] The issue is reviewable on a reasonableness standard, given that it is a question of mixed fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs 164-166, [2008] 1 SCR 190 (*Dunsmuir*)).

**VII. Analysis**

[14] The panel's decision is reasonable and no intervention from this Court is warranted.

[15] The applicant had the onus of demonstrating to the IAD, on a balance of probabilities, that (1) marriage by proxy is valid under Mauritanian law (*Quao, supra*, at paragraph 31); and (2) that a marriage by proxy had been validly solemnized.

[16] The IAD validly concluded, in light of the relevant articles of the Personal Status Code and the documentary evidence adduced by the applicant regarding the law and customs of Mauritania, that nothing in the evidence gave any clear indication as to the legality of marriage by proxy in Mauritania.

[17] The IAD further concluded that the solemnization of a marriage by proxy had not been proven in fact and that the marriage was therefore void. The panel relied on the lack of any reference to a proxy having represented the applicant in the "Acte de marriage" or in the excerpt from the registry of marriage certificates. Furthermore, the applicant did not submit a written proxy.

[18] The confusion noted by the IAD in the “Acte de marriage” with respect to the role of Tidiane Mohamed Diagana, whose name appears as both witness and proxy at the time of the marriage, explains why the IAD assigned no probative value to this document and why it made an adverse finding with regard to the applicant because the certificate failed to meet the requirements of article 76 of the Personal Status Code.

[19] This Court has previously found that the absence of a proxy document as well as the shortcomings in a marriage certificate are valid grounds on which a panel may base its decision not to assign any probative value to a marriage certificate (*Ipala v Canada (Minister of Citizenship and Immigration)* 2005 FC 472 at paragraph 29, 2005 CarswellNat 898).

[20] As to the applicant’s argument that irregularities in the marriage certificate should not render the marriage void, the IAD’s finding was in fact that it was the lack of evidence of the solemnization of the marriage by proxy that rendered the marriage void and not the shortcomings in the marriage certificate, which was just one part of the evidence considered by the IAD.

[21] Lastly, contrary to what the applicant claims, one does not have to find problems with an official document issued by a foreign state, such as a marriage certificate, to question its validity, because as the IAD noted, such documents benefit only from a presumption of validity (*Ramalingam v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC) at paragraph 5, 1998 CarswellNat 35).

[22] The IAD's determination that the applicant's marriage is void under Mauritanian law, and therefore under Canadian law, falls within a range of possible outcomes "which are defensible in respect of the facts and law" (*Dunsmuir, supra*, at paragraph 47); it is therefore reasonable.

[23] The parties, although given the opportunity to do so, did not submit any questions for certification.

**JUDGMENT**

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed and no question will be certified.

“Simon Noël”

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Judge

Certified true translation  
Sebastian Desbarats, Translator



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1757-12

**STYLE OF CAUSE:** KISSIMA CHEIKHNA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 25, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SIMON NOËL J.

**DATED:** October 1, 2012

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