

Federal Court



Cour fédérale

Date: 20140522

Docket: IMM-1848-13

Citation: 2014 FC 490

Ottawa, Ontario, May 22, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

XING HUO LI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Xing Huo Li seeks judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board dismissing his appeal of the refusal of his wife's application for permanent residence. Mr. Li had sponsored his wife under the Family Class category.

[2] The Board provided detailed reasons in support of its conclusion that the marriage in question was not genuine, and had been entered into for immigration purposes. In coming to this conclusion, the Board identified numerous inconsistencies between Mr. Li's testimony and the information that had been provided by his putative wife at the visa post in Beijing.

[3] Mr. Li asserts that he was treated unfairly by the Board, both as a result of the Board's refusal of an adjournment to the Minister, and its refusal to allow his wife to testify. Mr. Li further contends that the Board's decision was substantively unreasonable. I do not agree that there was any unfairness in the process before the Board, and am satisfied that the Board's decision was indeed reasonable. As a consequence, the application will be dismissed.

I. The Minister's Request for an Adjournment

[4] The Minister was evidently interested in participating in Mr. Li's appeal, but requested an adjournment of the hearing as a result of the unavailability of a representative. The Board refused the request, as well as a subsequent request by the Minister to reopen the hearing in order to allow for cross-examination. The Board did, however, allow the Minister to make written submissions following the hearing, after reviewing a recording of the appeal.

[5] Mr. Li argues that these events resulted in a breach of procedural fairness, as the Minister's representative may have consented to the appeal if he had been present at the hearing.

[6] There are a number of reasons why I do not accept this argument.

[7] The first is that it is apparent from the transcript that Mr. Li's counsel opposed the Minister's request for an adjournment before the Board. Surely if Mr. Li was of the view that the presence of a Minister's representative at his appeal hearing could have assisted him in some way and was essential to the fairness of his hearing, one would have expected him to support the Minister's request, rather than oppose it.

[8] It is also not apparent how the presence of the Minister's representative at the appeal hearing would have assisted Mr. Li. Nothing prevented the Minister's representative from

consenting to having the appeal allowed before, during or after the hearing, if the representative was of the view that it was in the interests of justice to do so.

[9] It is, moreover, evident from the record that the Minister would in fact have taken a position that was adverse to Mr. Li's interests, had he been granted the adjournment. The written submissions provided by the Minister's representative after the hearing carefully outlined the numerous problems with the stories provided by Mr Li and his wife with respect to the circumstances surrounding their marriage.

[10] At the end of the day, any prejudice that was suffered as a result of the refusal of the adjournment was suffered by the Minister and not by Mr. Li. The Minister has not taken issue with the refusal of the adjournment, and no breach of procedural fairness has been established in this regard by Mr. Li.

II. The Failure of Mr. Li's Wife to Testify

[11] Mr. Li also submits that he was denied procedural fairness by the Board as it refused to allow his wife to testify in support of the appeal.

[12] Rule 37(1) of the *Immigration Appeal Division Rules*, SOR/2002-230, requires that if a party wants to call a witness at an IAD hearing, the party must provide the Board and the other party with the name and other information regarding the witness in writing in advance of the hearing. It appears from the transcript of the hearing that counsel for Mr. Li failed to comply with this requirement.

[13] It is true that Rule 37(4) confers discretion on the Board to allow a witness to testify, notwithstanding a failure to comply with the notice requirements of Rule 37(1). The onus is,

however, on the party seeking the exercise of this discretion to ask for it. There was no request by Mr. Li's counsel that the Board exercise its discretion in this regard.

[14] I recognize that this Court has held that there may be obligations on Board members to facilitate the calling of witnesses in cases where a party is self-represented: see, for example, *Kamtasingh v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 45 at para. 10, [2010] F.C.J. No. 45. In this case, however, Mr. Li was represented by experienced counsel (not counsel on this application), and it was incumbent on him to seek leave of the Board to call the wife, if he felt it necessary to do so.

[15] Mr. Li has, moreover, failed to provide an affidavit from his wife in support of his application for judicial review. Thus there is no evidence before the Court as to what she could possibly have said that could have allayed the Board's significant credibility concerns, had she been given the opportunity to testify.

[16] Finally, it must be recalled that Mr. Li's wife was afforded an opportunity to provide her version of events, and she did so at some length in the course of her interview at the Beijing visa post. In its decision, the Board pointed out several inconsistencies between her story and that of Mr. Li.

[17] While Mr. Li correctly observes that we only have the Computer Assisted Immigration Processing System (CAIPS) notes of that interview, and not a transcript, there is no evidence before the Court to suggest that the CAIPS notes do not accurately reflect what was said by Mr. Li's wife in the course of her interview.

[18] In these circumstances, I have not been persuaded that there has been a breach of procedural fairness with respect to Mr. Li's wife's ability to testify that would justify the setting aside of the Board's decision.

III. Was the Board's Decision Substantively Unreasonable?

[19] The Board identified approximately 20 different credibility concerns that led to its *de novo* finding that Mr. Li's marriage was not genuine and had been entered into primarily for the purpose of acquiring a privilege or status under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[20] These included the fact that the marriage took place six days after Mr. Li met his wife in person for the first time, the wife's lack of familiarity with Mr. Li's previous marriages, his friends or his life in Canada, and the fact that she had never even spoken to Mr. Li's son.

[21] At the hearing of the application for judicial review, Mr. Li only took issue with one of the Board's credibility findings. This was the speed with which the marriage took place and the inference drawn by the Board that the marriage was therefore entered into for immigration purposes.

[22] Even if I were to accept Mr. Li's claim that the inference drawn by the Board was unreasonable (which I do not), the remaining credibility concerns in this case were so overwhelming that the Board could not reasonably have come to a different conclusion.

IV. Conclusion

For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

"Anne L. Mactavish"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1848-13

STYLE OF CAUSE: XING HUO LI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: MACTAVISH J.

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APPEARANCES:

Mr. Robert Blanshay

FOR THE APPLICANT

Ms. Judy Michaely

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Robert Israel Blanshay
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE RESPONDENT