Federal Court Cour fédérale

Date: 20150819

Docket: IMM-402-15

Citation: 2015 FC 986

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 19, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DIANE BRUNET

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary

> [18] With respect to the relevant issue, namely, whether the marriage is genuine or whether it was entered into for the purpose of acquiring a status under the Act, it is well established in the case law that reasonableness is the applicable standard (see *Chen v. The Minister of Citizenship and Immigration*, 2011 FC 1268, *Singh v. The Minister of Citizenship and Immigration*, 2006 FC 565 [*Singh*] and *Mohamed*, above).

> [17] As established by the case law, the onus was on the applicant to demonstrate to the IAD, on a balance of probabilities, that her spouse met the requirements of section 4 of the Regulations (see, *inter alia*, *Mohammed c. The Minister of Citizenship and Immigration*, 2055 FC 1442 and *Mohamed v. The Minister of Citizenship and Immigration*, 2006 FC 696, 296 F.T.R. 73 [*Mohamed*]).
>
> [22] In my view, the applicant's arguments require a microscopic examination of the panel's decision. Having read the decision as a whole, heard the submissions of counsel for the parties and reviewed the relevant evidence, I am satisfied that the IAD took into consideration the evidence before it and rendered a reasonable decision falling within a range of possible, acceptable outcomes.

(As expressed by Justice Yvon Pinard in *Perez Achahue v Canada (Citizenship and Immigration)*, 2012 FC 1210).

II. Introduction

[1] This is an application for judicial review under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated December 10, 2014, in which the Immigration Appeal Division [IAD] dismissed the applicant's appeal of the refusal of her application to sponsor her husband.

III. Facts

[2] The applicant is a 54-year-old Canadian citizen who applied to sponsor her husband, a Tunisian citizen, who will turn 33 a month from now.

[3] The applicant and her husband met on an online chat site. They started chatting on this site in August 2009, and then continued staying in touch by email. In September 2009, the applicant's husband declared his love for the applicant.

[4] In November 2009, the applicant travelled to Tunisia for two weeks in order to visit her future husband. During her second two-week trip, in January 2010, her husband asked her to marry him.

[5] The pair wed on her third trip to Tunisia, in May 2010.

[6] In total, the applicant has travelled to Tunisia 11 times in order to visit and live with her husband.

[7] In a letter dated April 8, 2011, a visa officer refused the sponsorship application of the applicant and her husband on the ground that the latter is not a member of the family class because he is caught by subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[8] On October 15, 2014, a hearing *de novo* was held before the IAD, and the appeal was dismissed on December 10, 2014.

IV. Impugned decision

[9] In its reasons, the IAD found that the applicant did not establish, on a balance of probabilities, that her marriage to the applicant is genuine and that it was not entered primarily for the purposes of acquiring any status or privilege under the IRPA, pursuant to subsection 4(1) of the Regulations.

[10] Specifically, the IAD determined that the applicant and her husband lacked credibility with respect to the genuineness of their marriage in light of the factors developed in *Chavez, Rodrigo v MCI*, IAD TA3-24409 (Hoare, February 11, 2005) [*Chavez*]:

i. The length of the relationship: The IAD noted that the relationship between the applicant and her husband developed very quickly. The IAD was not convinced that "the applicant's interest in the appellant was based on wanting to know about Canada" and found that it was not "credible that a mutual love could have developed in such a short amount of time in the particular context of this appeal, given the differences between the appellant and the applicant, and a relationship that developed mostly on the Internet" (IAD's decision, applicant's record, at para 14).

ii. Time spent together: The IAD held that "[c]onsidering that the appellant was practically a stranger whom the applicant had met face to face for the first time only two days previously, was twenty-one years older than he and Christian, I find it incredible that the applicant's family, no matter how open-minded they were as Muslims, would have so readily accepted the appellant into their home, introduced, according to the applicant, as an Internet friend. It simply does not make sense. The applicant also was not able to clearly state what would have happened if they had not gotten along that first time. There was apparently no plan B" (IAD's decision, applicant's record, at para 15).

iii. Marriage celebration: The IAD noted that the couple wed at the city hall, followed by a small reception for about ten people. According to the testimony, the reception was small because the applicant was still in mourning after the death of his mother. The IAD concluded that the attitude of the applicant's father, who had wished him good

luck for his marriage, was "totally implausible behaviour on the part of a parent" and that "[e]ven an open-minded parent would have some concerns, at least about the age difference or about the probable difficulty of having children". The IAD further noted that the male applicant's friends were not critical of the marriage. In short, the IAD found "the fact that no one in the applicant's family or his circle of friends had any concerns regarding this marriage to have a negative impact on the genuineness of the marriage" (IAD's decision, applicant's record, at para 16).

iv. Behaviour subsequent to the marriage: The IAD observed that the couple had a great deal of communication and contact, as established by the evidence in the form of almost daily emails and telephone calls. However, the IAD noted that, in the interview with the visa officer, the applicant's husband was unable to explain what he found attractive about the applicant or to display adequate knowledge about her. The IAD therefore did not accept as credible the husband's explanations for his lack of knowledge about the applicant during the interview in February 2010, but recognized that he knew much more about her five years later at the hearing before the IAD.

The IAD then wrote that there were "obvious compatibility problems between the appellant and the applicant. The appellant is fifty-three years old and will retire next year. She has had two previous long-term relationships. The applicant is thirty-two years old and still not working in his domain. The appellant is Catholic and the applicant Muslim. Even if neither is religious, their cultural backgrounds differ" (IAD's decision, applicant's record, at para 22).

[11] Lastly, the IAD found that even though the applicant's feelings towards her husband were sincere, the evidence did not establish that the marriage was not entered into, from the point of view of the her husband, primarily for purposes of immigration to Canada.

V. Statutory provisions

[12] Subsection 4(1) of the IRPR is reproduced below:

Bad faith	**Mauvaise foi**
4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**4**. (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(*a*) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	*a*) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(*b*) is not genuine.	*b*) n'est pas authentique.

VI. Issue

[13] Is the IAD's decision reasonable in light of the evidence on the record?

VII. Analysis

[14] The applicant claims that the IAD's decision is unreasonable because it does not take the evidence on the record into account.

[15] She further submits that the generally accepted factors arising from *Chavez*, above, for assessing the genuineness of a marriage, were not evaluated fairly, the IAD focussing on how the applicant and her spouse met.

[16] I disagree: the IAD's assessment, as seen in its reasons, reflects an extremely sensible decision and a reasonable analysis based on the recognized factors in *Chavez*, above. Each factor was weighed and reveals an overall understanding of the facts on the record (see paragraph 10 of this Court's reasons, above, reproducing the observations of the IAD). The Court also points to pages 2487 to 2491 of the tribunal record and particularly paragraph 15 of the IAD's decision.

VIII. Conclusion

[17] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. There is no question of importance to be certified.

"Michel M.J. Shore"

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-402-15
STYLE OF CAUSE:	DIANE BRUNET v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 18, 2015
JUDGMENT AND REASONS BY:	SHORE J.
DATED:	AUGUST 19, 2015

APPEARANCES:

Stéphanie Valois	FOR THE APPLICANT
Sylviane Roy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphanie Valois Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT