Federal Court  Cour fédérale

Date: 20161031

Docket: IMM-5781-15

Citation: 2016 FC 1207

Ottawa, Ontario, October 31, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

SAMUEL VAN NGUYEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant Mr. Samuel Van Nguyen wished to sponsor his wife, Mrs. Doan T. Truong Nguyen, a citizen of Vietnam, for permanent residence in Canada. An immigration officer from the High Commission of Canada in Singapore dismissed Mr. Nguyen's application on the grounds that the marriage is not genuine and that the couple has entered into their relationship

primarily for the purpose of obtaining status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Therefore, Mrs. Truong Nguyen could not be considered a spouse and sponsored in the family class under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[2] Mr. Nguyen appealed the officer's decision to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada. In December 2015, the IAD dismissed Mr. Nguyen's appeal, agreeing with the officer's conclusion that the marriage was motivated primarily by a desire to obtain an immigration advantage.

[3] Mr. Nguyen has applied to this Court for judicial review of the IAD's decision. He argues that the decision is unreasonable because it failed to assess the evidence on the genuineness of his marriage, misconstrued the facts and evidence presented, and erroneously took into consideration his previous marriage. Mr. Nguyen also contends that the IAD's reasons are inadequate since they do not sufficiently explain how the tribunal reached its conclusion. Mr. Nguyen asks this Court to quash the decision and to send it back to the IAD for redetermination by a different panel.

[4] Mr. Nguyen's application raises two issues: 1) was the IAD's decision unreasonable; 2) were the IAD's reasons inadequate.

[5] Having considered the evidence before the IAD and the applicable law, I can find no basis for overturning the decision. The IAD's decision was responsive to the evidence and the

outcome is defensible based on the facts and the law. It falls within the range of possible, acceptable outcomes. I also find that the reasons for the decision adequately explain how the IAD concluded that Mr. Nguyen's marriage to Mrs. Truong Nguyen is not genuine and was entered into primarily for the purpose of obtaining immigration status in Canada. I must therefore dismiss Mr. Nguyen's application for judicial review.

II. Background

A. *The IAD's Decision*

[6] The IAD's decision is brief, totalling 15 paragraphs spread over three pages.

[7] The IAD did not find Mr. Nguyen and Mrs. Truong Nguyen to be credible and trustworthy witnesses. The panel determined that Mr. Nguyen did not provide proof of the genuineness and evolution of his relationship with Mrs. Truong Nguyen. Additionally, the respective testimonies of the two spouses unveiled many discrepancies, in particular with regard to the date of the marriage proposal and their knowledge of each other's prior marital status.

[8] The IAD also observed that, not only was Mr. Nguyen having his initial meeting with Mrs. Truong Nguyen in Vietnam at the same time as his first wife was entering Canada as a permanent resident, but he further never lived with his first wife. Also damaging to Mr. Nguyen's case was that he could not remember his first wife's name during oral testimony. The IAD therefore concluded that his first marriage was one of convenience and that it was entered into primarily for the purpose that his then wife obtaining permanent resident status.

[9] A witness, who allegedly knew Mr. Nguyen for 25 years, testified about the genuineness of Mr. Nguyen's relationship with Mrs. Truong Nguyen. However, the IAD gave little weight to this testimony, as the witness did not even know about Mr. Nguyen's first marriage.

[10] The IAD acknowledged that the couple has a child. The panel noted that the existence of a child creates a presumption of genuineness, but determined that this presumption was rebutted in this case and outweighed by the credibility concerns. The IAD further explained that Mr. Nguyen had not "travelled to Vietnam to see his son since his first birthday in 2013" and that there was "very little evidence of financial support" prior to the birth of his child.

B. *The Standard of Review*

[11] This Court has consistently held that decisions of the IAD, as an expert tribunal, are to be assessed on the reasonableness standard and owed deference (*Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 [*Burton*] at para 13; *MacDonald v Canada (Minister of Citizenship and Immigration)*, 2012 FC 978 at para 16). More specifically, whether a marriage is entered into for the primary purpose of immigration is a question of mixed facts and law and a highly factual determination, subject to review on a reasonableness standard (*Burton* at para 15; *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 [*Bercasio*] at para 17; *Aburime v Canada (Minister of Citizenship and Immigration)*, 2015 FC 194 [*Aburime*] at para 19; *Gill v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1522 [*Gill*] at para 17).

[12] As to the issue of adequacy of reasons, it is no longer a stand-alone ground for judicial review and is also to be reviewed under a reasonableness standard (*Newfoundland and Labrador*

Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 [*Newfoundland Nurses*] at paras 14-16; *Canada (Citizenship and Immigration) v Gabor*, 2015 FC 168 at paras 16-19).

[13] When reviewing a decision on the standard of reasonableness, the analysis is concerned "with the existence of justification, transparency and intelligibility within the decision-making process", and the IAD's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). In conducting a reasonableness review of factual findings, it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland Nurses* at para 17).

III. Analysis

A. *Was the IAD's Decision Unreasonable?*

[14] Mr. Nguyen claims that the IAD's decision was unreasonable because it failed to assess all of the evidence on the genuineness of his marriage, misconstrued the facts and evidence

before it, and erroneously took into consideration his previous marriage to his first wife, a Chinese national.

(1) Subsection 4(1) is a disjunctive test

[15] I premise my analysis with the following comment. Mr. Nguyen appears to suggest that, since paragraph 4(1)(b) of the Regulations uses the present tense when requiring that the marriage be genuine, proving the genuineness of his relationship today would be enough to meet the test under subsection 4(1). This is not the case. In *Gill*, Chief Justice Crampton summarized as follows the approach in assessing marriages pursuant to subsection 4(1):

> [29] […] A plain reading of section 4 of the Regulations reflects that these are two distinct tests. If a finding that a marriage is genuine precluded the possibility of a finding that the marriage was entered into primarily for the purpose of acquiring any status or privilege under the IRPA, the latter test would be superfluous. This would offend the presumption against statutory surplusage. (*R v Proulx*, 2000 SCC 5, at para 28, [2000] 1 S.C.R. 61).

[16] There are two distinct tests under paragraphs 4(1)(a) and (b) of the Regulations, and either test can dispose of an application. Finding that a marriage is genuine does not negate the requirement that the marriage must not have been entered into primarily for the purpose of acquiring a status. In order to be considered a spouse, the marriage needs to be genuine ***and*** the relationship must not have been entered into primarily for immigration purposes (*Burton* at para 28; *Khan v Canada (Minister of citizenship and Immigration)*, 2015 FC 320 [*Khan*] at para 16; *Gill* at paras 29-30). Subsection 4(1) makes it clear that "[e]ither finding precludes the spouse from obtaining the necessary visa to live with her husband in Canada" (*Khan* at para 16; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077 at para 5).

(2) The IAD reasonably assessed the evidence

[17] Mr. Nguyen submits that, in the present case, the IAD did not take into consideration all of his circumstances nor the various positive factors and evidence in support of his relationship with Mrs. Truong Nguyen. He referred more specifically to their shared country of origin and language, their Vietnamese cultural, ethnic and religious commonality and compatibility, their child, phone bills showing communications, a life insurance policy, proof of financial support, and his trips back to Vietnam since 2009. Mr. Nguyen further pleads that inconsistencies in testimonies do not prove an absence of a *bona fide* marital relationship and that "inconsistencies […] would represent a thin foundation for rejecting all of the other evidence favouring the genuineness of [a] marriage" (*Sandhu v Canada (Citizenship and Immigration)*, 2015 FC 1303 [*Sandhu*] at para 6). Mr. Nguyen thus submits that the IAD erred in ignoring "significant evidence of a positive, genuine relationship by unduly focusing on minor inconsistencies" (*Amayeanvbo v Canada (Citizenship and Immigration)*, 2011 FC 621 at para 45).

[18] I do not agree with Mr. Nguyen's submissions.

[19] The IAD assessed all the evidence, and dismissed Mr. Nguyen's appeal for several reasons. These included the facts that Mr. Nguyen did not provide evidence as to how his relationship with Mrs. Truong Nguyen evolved before they met in person; that he previously sponsored someone else as his wife but could not remember her name during the oral hearing; that his first wife arrived in Canada when Mr. Nguyen was meeting Mrs. Truong Nguyen for the first time in Vietnam; that Mr. Nguyen claimed that he did not know his first wife's plan to come

to Canada; that there were discrepancies between the testimonies of Mr. Nguyen and Mrs. Truong Nguyen regarding the knowledge of Mr. Nguyen's first marriage and the proposal date; and that the close friend who acted as a witness did not have knowledge of Mr. Nguyen's first marriage. In addition, the IAD correctly pointed out that, even though the presence of a child creates a presumption that a relationship is genuine, that presumption can be rebutted. This is what happened here, as the IAD voiced many credibility concerns.

[20] I pause to observe that this is not a case where the adverse credibility findings made by the IAD are not supported by the evidence on the record. Mr. Nguyen indeed acknowledged many of the deficiencies and contradictions. This situation is therefore quite different from the *Sandhu* and *Saroya v Canada (Citizenship and Immigration)*, 2016 FC 414 cases cited by Mr. Nguyen.

[21] This Court owes deference to the IAD on issues of credibility. This applies even more so in a case like this, where people seeking to deceive the immigration authorities would want to make their marriage look genuine. As recently indicated by the Court, "assessing the genuineness of a marriage is a challenging task at the best of times", in a context where people "who are intent on committing a form of deceit to gain the highly valuable status of Canadian permanent residence will conduct themselves to make the relationship look outwardly genuine, when it is not" (*Bercasio* at para 23).

[22] I am mindful of the fact that, as pointed out by counsel for Mr. Nguyen, the IAD should not turn its review into a memory test (*Shabab v Canada (Citizenship and Immigration)*, 2016

FC 872 at para 39). However, singling out conflicting and incoherent evidence and questioning an applicant on it, as the IAD did here, does not amount to that.

[23] Contrary to Mr. Nguyen's submissions, this is also not a situation where "the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact" (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*] at para 17). It is well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (FCA) at para 1). A failure to mention a particular piece of evidence does not mean that it was ignored (*Newfoundland Nurses* at para 16). It is only when a tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Cepeda-Gutierrez* at paras 16-17). This is not the case here.

[24] Assessing the genuineness of a marriage is a highly factual determination at the heart of the IAD's expertise and functions. Even though the Court might have evaluated the evidence differently, it should not intervene if a decision is justifiable, transparent and intelligible and falls within the confines of possible, acceptable outcomes. I find that this is clearly the case for the IAD's decision.

(3) The IAD did not misconstrue facts

[25] Mr. Nguyen further submits that the IAD erred when it indicated that he had not "travelled to Vietnam to see his son since his first birthday in 2013 even though he made more regular visits prior to his birth", and when it determined that "very little evidence of financial support" was provided for the period prior to the birth of their child. Mr. Nguyen claims that these findings of fact are not accurate, as he provided proof that he visited his son in January 2014 and that he financially supported his spouse and her son from a previous marriage prior to the birth of his biological son, through 17 money transfers totalling $6,600.

[26] I am not persuaded that these excerpts amount to a misconstruction of facts justifying the intervention of this Court. In fact, Mr. Nguyen's arguments instead reflect a narrow reading of two passages in the IAD's decision, divorced from the overall context of the panel's analysis.

[27] I acknowledge that the last time Mr. Nguyen effectively travelled to Vietnam was in early 2014. However, what the IAD said was that Mr. Nguyen had not travelled since *his son's first birthday*, which occurred in December 2013. The central fact here is that Mr. Nguyen had not, at the time of the IAD's hearing, seen his son since his first birthday. While the words chosen by the IAD may not be as clear as they could have been, it is obvious that the panel was aware of Mr. Nguyen's visit in January 2014. I find no material error in the statement picked out by Mr. Nguyen, sufficient to render the IAD's decision unreasonable. Regarding the financial support, I observe that from the birth of his son up to October 2015 (a period of a little less than three years), Mr. Nguyen sent approximately $18,700 to his wife. It was thus open to the IAD, and

certainly within the sphere of reasonableness, to qualify as “very little evidence of financial support” what was provided by Mr. Nguyen prior to his son’s birth (i.e., $6,600), given that the amount sent to Mrs. Truong Nguyen tripled after his son’s birth.

(4) The IAD rightly considered Mr. Nguyen’s first marriage

[28] Mr. Nguyen then argues that the IAD focused on irrelevant considerations when it referred to his previous marriage with his first wife, and unreasonably drew a negative credibility inference from it with respect to the genuineness of his present marriage.

[29] I am of the view that Mr. Nguyen’s claim in this respect is ill-founded. As acknowledged by counsel for Mr. Nguyen at the hearing before this Court, an applicant’s immigration history and past sponsorship are relevant to a decision by the IAD under subsection 4(1). It is in fact recognized that immigration history can be assessed in determining if a marriage meets the requirements of the Regulations (Aburime at para 23; Enright v Canada (Citizenship and Immigration), 2013 FC 209 at para 45). The IAD can indeed consider a large number of factors in determining the genuineness of a marriage (Ouk v Canada (Citizenship and Immigration), 2007 FC 891 at para 13; Khera v Canada (Citizenship and Immigration), 2007 FC 632 at para 10). It was thus reasonable for the IAD to factor this prior marriage of convenience in its analysis.

[30] Mr. Nguyen complains that this finding clouded the IAD’s approach to the rest of the evidence and unduly tainted its analysis. I disagree. The IAD could certainly not ignore this element given its direct relevance to Mr. Nguyen’s application for spousal sponsorship, and

nowhere do I see in the IAD's reasons any indication that the panel blinded itself to the evidence before it because of Mr. Nguyen's first marriage.

(5) Conclusion on reasonableness

[31] In essence, Mr. Nguyen is inviting the Court to reweigh the evidence that he has presented before the IAD. In conducting a reasonableness review of factual findings, it is not the role of the Court to do so or to reassess the relative importance given by the decision-maker to any relevant factor or piece of evidence. If the findings provide sufficient justification and rationality in light of the totality of the evidence before the decision-maker, a reviewing court should not substitute its own view of a preferable outcome.

[32] True, the IAD's reasons could perhaps have been more explicit and articulate, and more precisely worded. But I am not persuaded that the decision reaches the level of unreasonableness or lacks intelligibility. The test this Court has to apply is not whether the decision satisfies the expectations of Mr. Nguyen; the test is the reasonableness of the decision.

[33] Reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). A judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should instead approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Ragupathy v Canada (Minister of Citizenship and*

Immigration), 2006 FCA 151 at para 15). When read as a whole, the IAD's decision is reasonable and does not fall outside the realm of acceptable, possible outcomes. The IAD properly assessed all the necessary factors and provided an analysis of the evidence presented. The intervention of this Court is not warranted.

B. ***Were the IAD's Reasons Inadequate?***

[34] Mr. Nguyen also submits that the IAD's decision, which is only three pages long with an actual analysis of merely seven paragraphs, is simplistic and demonstrates insufficient consideration of key evidence. He relies on the Court's decision in *Javed*, where it was stated that "[t]he failure to provide meaningful or adequate reasons for the decision is a breach of the duty of procedural fairness" (*Javed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1458 at para 22).

[35] This, in my view, is an inaccurate statement of the law on adequacy of reasons.

[36] Sufficiency of reasons is not measured by the pound. No matter the number of words used by a decision-maker or how concise a decision may be, the test is whether the reasons are clear and intelligible and explain to the Court and the parties why the decision was reached. Reasons are sufficient if they "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland Nurses* at para 16). In order to provide adequate reasons, "the decision maker must set out its findings of fact and the principal evidence upon which those findings were based", as well as "address the major point in issue" and "reflect consideration of

the main relevant factors" (*VIA Rail Canada Inc v National Transportation Agency*, [2001] 2 FCR 25 at para 22). This is exactly what the IAD did.

[37] As I explained in *Canada (Minister of Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at paras 30-36 and *Al-Katanani v Canada (Citizenship and Immigration)*, 2016 FC 1053 [*Al-Katanani*] at para 32, the law relating to the sufficiency of reasons in administrative decision-making has evolved substantially since *Dunsmuir*. In *Newfoundland Nurses*, the Supreme Court provided guidance on how to approach situations where decision-makers provide brief or limited reasons. Reasons need not be fulsome or perfect, and need not address all of the evidence or arguments put forward by a party or in the record (*Newfoundland Nurses* at paras 16 and 18). Reasonableness, not perfection, is the standard. Even where the reasons for the decision are brief, or poorly written, the Court should defer to the decision-maker's weighing of the evidence, as long as it is able to understand why the decision was made (*Al-Katanani* at para 32).

[38] Reasons do not need to be lengthy either. Even a sentence or two can be enough to provide adequate reasons (*Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158 at para 25). Short as they may be, reasons will be sufficient if they "allow the reviewing court to assess the validity of the decision" (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 46).

[39] The IAD's reasons enable me to understand how the panel reached its conclusion as they explain why Mr. Nguyen and Mrs. Truong Nguyen do not meet the requirements of subsection 4(1) of the Regulations, and there is factual foundation for reaching this conclusion. There is no inadequacy of reasons here.

IV. Conclusion

[40] The IAD's refusal of Mr. Nguyen's appeal on the ground that his marriage is not genuine and that the couple has entered into their relationship primarily for the purpose of obtaining immigration status represents a reasonable outcome based on the law and the evidence before the panel. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. In addition, the IAD provided adequate reasons. Therefore, I must dismiss Mr. Nguyen's application for judicial review.

[41] Neither party has proposed a question of general importance for me to certify. I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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