

Federal Court



Cour fédérale

Date: 20170113

Docket: IMM-2817-16

Citation: 2017 FC 50

Ottawa, Ontario, January 13, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SUKHVIR SINGH MOMI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Sukhvir Singh Momi (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”), dismissing his appeal from a finding by a Visa Officer (the “Officer”) that his marriage to Sukhwinder Kaur was not genuine within the meaning of subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) and accordingly, that his wife is not a member of the family class as defined in paragraph 117(1)(a) of the Regulations.

[2] The Applicant is a permanent resident. He married his wife on April 10, 2013 in India. The subsequent spousal sponsorship was refused after an interview held on March 4, 2015 in New Delhi, India. The refusal letter is dated March 12, 2015.

[3] The Officer refused the spousal sponsorship application for several reasons, including the opinion that the match between the Applicant and his wife was not compatible; the marriage occurred in haste; the wedding photos appeared staged; the wife was aged 38 at the time of the marriage which was her first marriage; and a finding that telephone calls between the Applicant and his wife, 4 to 5 times a day, were not credible.

[4] The Applicant testified in person before the IAD; his wife gave her evidence by way of telephone communication from India.

[5] The IAD found that the Applicant did not meet the onus of showing, on a balance of probabilities, that the marriage was genuine and not entered into for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[6] Although the IAD found "some evidence" in support of a genuine marriage, it also noted that there were "significant, irreconcilable inconsistencies" between the oral evidence of the Applicant and his wife, and between their evidence and the documentary evidence, including the affidavit filed by the Applicant before the IAD.

[7] The IAD observed that the evidence of the wife was occasionally hesitant, vague and nonresponsive. It made negative credibility findings against the wife. It also found that the explanation for the absence of the Applicant's parents and son from the wedding was not credible.

[8] In challenging the decision of the IAD, the Applicant argues that its finding that the marriage was not genuine was not reasonable. He also submits that the credibility findings of the IAD were not justifiable, transparent and intelligible.

[9] On the other hand, the Minister of Citizenship and Immigration (the "Respondent") argues that the IAD's conclusions about the genuineness of the marriage and the credibility of the evidence met the required standard of reasonableness.

[10] According to the decision in *Nahal v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 81, the findings of the IAD on the genuineness of the marriage are reviewable on the standard of reasonableness. In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, the Supreme Court of Canada said that this standard requires that a decision be "justifiable, transparent and intelligible" and fall within a range of possible, acceptable outcomes.

[11] I agree with the submissions of the Applicant that the decision of the IAD, in this case, does not meet the required standard. The IAD did not identify the evidence that it found supportive of the genuineness of the marriage and did not explain why that evidence was

insufficient to overcome minor discrepancies in the evidence given by the Applicant and his wife.

[12] Upon my review of the transcript, it seems that the IAD took an unduly narrow and microscopic approach to its assessment of the evidence. This approach was not justified in the circumstances. It renders the decision unreasonable and the application for judicial review will be allowed. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2817-16

STYLE OF CAUSE: SUKHVIR SINGH MOMI v. MCI

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 15, 2016

JUDGMENT AND REASONS: HENEGHAN J.

DATED: JANUARY 13, 2017

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