

Federal Court



Cour fédérale

Date: 20170412

Docket: IMM-2348-16

Citation: 2017 FC 365

Ottawa, Ontario, April 12, 2017

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ENSIEH-ALSADAT MOOSSAVI-ZADEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] In this Application, Ms. Moossavi-Zadeh, seeks judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board [IAD] dismissing her appeal of a visa officer's decision that her marriage to Mr. Cetin Yildirim is not genuine or was entered into for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Ms. Moossavi-Zadeh submits that the IAD's decision [the Decision] was unreasonable because the IAD failed to consider important evidence, misapprehended the facts, relied on improper principles and made unreasonable credibility findings.

[3] To prevail on this Application, Ms. Moossavi-Zadeh must establish that the IAD's Decision was unreasonable with respect to both of the paramount findings that the IAD reached, namely, that she had not established on a balance of probabilities (i) that her marriage to Mr. Yildirim is genuine, and (ii) that the marriage was not entered into primarily for the purpose of acquiring any status or privilege under the IRPA.

[4] For the reasons set forth below, I have determined that Ms. Moossavi-Zadeh has not demonstrated that the second of those paramount findings was unreasonable. It will therefore not be necessary for me to address the finding that was made with respect to the genuineness of the marriage.

II. Background

[5] Ms. Moossavi-Zadeh is a citizen of Canada who immigrated from Iran in 2006.

[6] Mr. Yildirim is a citizen of Turkey who entered Canada through Montreal in 2001 and claimed refugee protection. After that claim was rejected on credibility grounds, a Departure Order was issued against him, which then became a Deportation Order. In 2006, when the Canada Border Services Agency [CBSA] was unable to locate him to remove him to Turkey, an arrest warrant was issued against him.

[7] In 2003, Mr. Yildirim divorced his first wife, who was living in Turkey with their two sons.

[8] After moving from Montreal to Vancouver without advising immigration authorities, Mr. Yildirim married his second wife [Second Wife] in November 2006. He remained married to his Second Wife throughout most of the period of his courtship to Ms. Moossavi-Zadeh. It appears to be common ground between the parties that Mr. Yildirim and his Second Wife never lived together. They were divorced sometime in the mid-to-latter part of 2012.

[9] Ms. Moossavi-Zadeh divorced her first husband in 2010 and then married Mr. Yildirim in a civil ceremony that took place in December 2012, after a religious ceremony that occurred in 2011.

[10] In August 2013, Mr. Yildirim was detained after attending an interview with a representative of Citizenship and Immigration Canada, in connection with Ms. Moossavi-Zadeh's spousal sponsorship application and his application for a work permit. After being released from detention, he departed for Turkey, where he currently resides.

[11] In May 2014, Ms. Moossavi-Zadeh's application to sponsor Mr. Yildirim for permanent residence was rejected by a visa officer located in Ankara. In making that determination, the visa officer noted, among other things, that Mr. Yildirim had been evasive in his explanation of the development of his relationship with Ms. Moossavi-Zadeh; that he was still married to his Second Wife while he was living with Ms. Moossavi-Zadeh; that he had not supplied satisfactory proof that he had actually lived with Ms. Moossavi-Zadeh; and that he had not adduced satisfactory proof of ongoing communication between them.

III. The Decision

[12] Over the course of a fairly lengthy Decision, the IAD identified numerous inconsistencies in the oral evidence given by Ms. Moossavi-Zadeh and Mr. Yildirim, as well as various aspects of their evidence that it characterized as being vague and unsatisfactory. The inconsistencies included internal inconsistencies in the evidence given by Mr. Yildirim, as well as inconsistencies with the evidence given by Ms. Moossavi-Zadeh and discrepancies with the documentary evidence that were not adequately explained.

[13] As a result of those concerns, the IAD found that the evidence given by Ms. Moossavi-Zadeh and Mr. Yildirim was not credible or trustworthy. In turn, that “lack of credibility on significant issues” led the IAD to give less weight to the consistent areas of their testimony, and to the documentary evidence that was adduced.

[14] In the result, the IAD concluded that Ms. Moossavi-Zadeh had not met her onus to establish on a balance of probabilities that her marriage to Mr. Yildirim is genuine and that their marriage was not entered into for the purpose of acquiring any status or privilege under the IRPA.

IV. Relevant Legislation

[15] The issue in this Application is whether the IAD reasonably found that Ms. Moossavi-Zadeh had not met her burden under subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. That provision states:

English Legislation

Législation française.

*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.

V. Issue

[16] Ms. Moossavi-Zadeh submits that the IAD erred in several different ways. These include reaching findings of fact without regard to the evidence before it, failing to consider the totality of the evidence, misapprehending the facts, relying on findings with respect to peripheral issues, and making an improper adverse inference. At the oral hearing, her counsel acknowledged that these issues can be conveniently grouped into the single issue of whether the Decision was unreasonable.

VI. Standard of review

[17] It is common ground between the parties that the determination of whether a marriage is genuine, or was entered into for a purpose of acquiring any status or privilege under the IRPA,

raises questions of mixed law and fact that are reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 53 [*Dunsmuir*]).

[18] In conducting a review on a reasonableness standard, the Court will assess whether the Decision falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir*, above, at para 47). In performing that assessment, the Court is required to consider whether the Decision fits comfortably within the principles of justification, transparency and intelligibility (*Dunsmuir*, above, at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 59).

VII. Analysis

[19] The first alleged shortcoming of the Decision that Ms. Moossavi-Zadeh identifies is that it unreasonably focused on peripheral issues, particularly with respect to the first two years of her relationship with Mr. Yildirim. I disagree.

[20] After identifying some consistent aspects of their testimony regarding their initial contacts, the IAD identified a discrepancy in that evidence with respect to when they were first intimate. In the context of this case, that was not a peripheral issue.

[21] The IAD then proceeded to discuss further inconsistencies with respect to when Ms. Moossavi-Zadeh became pregnant on two occasions, had two abortions, and used intra-uterine devices. The IAD drew an adverse inference from the absence of any documentary evidence related to those pregnancies, in part because of the extensive nature of the other evidence tendered by Ms. Moossavi-Zadeh, which totals approximately 1200 pages. Ms. Moossavi-Zadeh asserts that such documentary evidence would not have adversely affected

her appeal, unless the IAD assumed that it may have demonstrated that she and Mr. Yildirim did not intend to have children. However, the IAD simply found that the failure to adduce evidence related to the two pregnancies undermined the other evidence that was given with respect to those pregnancies, and upon which Ms. Moossavi-Zadeh relied. Particularly given that such other evidence was internally inconsistent, the adverse inference drawn by the IAD was not unreasonable.

[22] The IAD then identified a number of inconsistencies and other shortcomings with respect to the testimony of Ms. Moossavi-Zadeh and Mr. Yildirim regarding when their romance and feelings for each other began. Once again, in the context of Ms. Moossavi-Zadeh's application to sponsor Mr. Yildirim for permanent residence in Canada as a member of the spousal class, that was not a peripheral issue. I further note that the inconsistencies in question were not only between the evidence of the two individuals, but also in relation to different versions of events given by them.

[23] It may very well have been the case that Ms. Moossavi-Zadeh made a mistake, as she claimed, in describing the relevant dates in her written application materials. Nevertheless, it was not unreasonable for the IAD to have concluded that she had failed to provide a satisfactory explanation for the inconsistencies and other shortcomings, particularly given the fact that she had had time to reflect before completing her written application, which had been submitted closer in time to when the events actually occurred.

[24] It was also not unreasonable for the IAD to have observed that both Ms. Moossavi-Zadeh and Mr. Yildirim had provided dates in their written materials that were consistent with each other in their inaccuracy, relative to the dates that they subsequently provided in their testimony.

Moreover, it was reasonably open for the IAD to have found that the response provided by Mr. Yildirim when he was cross-examined with respect to the inconsistencies in question was vague and unresponsive.

[25] Ms. Moossavi-Zadeh also takes issue with the IAD's treatment of the evidence with respect to Mr. Yildirim's Second Wife, particularly regarding the IAD's failure to address his explanation for the timing of his divorce from her.

[26] In the Decision, the IAD noted Ms. Moossavi-Zadeh stated that Mr. Yildirim married his Second Wife in 2006, before he met Ms. Moossavi-Zadeh, and that Ms. Moossavi-Zadeh stated that she had no problem with Mr. Yildirim remaining married to his Second Wife, because he did not have sexual relations with his Second Wife. However, the IAD proceeded to observe that, when questioned about why he married his Second Wife on November 22, 2006, after he professed his love to her (Ms. Moossavi-Zadeh), she stated that it was because Mr. Yildirim was a man and had needs and she (Ms. Moossavi-Zadeh) was not available to him from 2006 to 2008.

[27] It was not unreasonable for the IAD to find that Ms. Moossavi-Zadeh had not provided a satisfactory explanation for the inconsistency between this latter testimony and her earlier testimony that Mr. Yildirim married his Second Wife before Ms. Moossavi-Zadeh met him. It was also not unreasonable for the IAD to find that Mr. Yildirim had been evasive in his response to questioning on this issue, and had not provided a cogent explanation for why his Second Wife wanted him to be her husband "on paper." In this general context, the fact that Mr. Yildirim may have had a reasonable explanation for the timing of his divorce from his Second Wife was of relatively minor importance. In any event, given the facts on the record, it was reasonably open

to the IAD to question the genuineness of Mr. Yildirim's marriage to his Second Wife and to make an adverse credibility finding against Mr. Yildirim and Ms. Moossavi-Zadeh.

[28] Ms. Moossavi-Zadeh also maintains that the IAD erred by failing to discuss documentary evidence that she adduced to support her position that she and Mr. Yildirim began to cohabit on Welcher Avenue in 2009, notwithstanding that they were each married to other people at that time. That documentary evidence included affidavits from neighbours and community members, as well as evidence that Mr. Yildirim received his phone bills electronically, and therefore did not need to change the address to which his paper invoices were being sent, namely, 663 Whiting Way.

[29] The affidavits and letters of support, together with solemn declarations, were explicitly mentioned, in a general way, towards the end of the Decision, when the IAD was summarizing its findings. In my view, it would have been preferable for that documentation to have been more explicitly addressed in the Decision. However, on the facts of this particular case, I am satisfied that the failure to discuss that evidence in more detail did not render the Decision unreasonable. This is particularly so given the fact that the evidence given by both Ms. Moossavi-Zadeh and Mr. Yildirim regarding the timing of their cohabitation was inconsistent. It was reasonably open to the IAD to refuse to accept Mr. Yildirim's explanation that he was shocked and under pressure when he stated to the CBSA in 2013 that he resided on Whiting Way, and that he had lived there since he moved to Vancouver in 2005.

[30] Ms. Moossavi-Zadeh also questioned the reliance placed by the IAD on Mr. Yildirim's past immigration history. However, that history was very relevant to the issue of Mr. Yildirim's credibility, which was a central issue in the Decision. Among other things, the evidence

pertaining to that history included Mr. Yildirim's admission that he came to Canada illegally with the passport of another person; his acknowledgement to the CBSA that he had made a fake refugee claim; and his subsequent claim that he had expressed himself the wrong way because of the pressure associated with having been arrested for the first time. It was reasonably open to the IAD to give greater weight to the statements given to the CBSA than to the later statements mentioned above, and to consider the former statements in assessing Mr. Yildirim's credibility. The same is true with respect to the fact that Mr. Yildirim failed to follow his lawyer's advice that he inform immigration officials of the fact that he had moved to Vancouver from Montreal.

[31] Ms. Moossavi-Zadeh further maintains that the Decision placed inordinate focus on the first two years of her relationship with Mr. Yildirim, namely 2006–2008, and did not materially address evidence pertaining to the evolution of their relationship after 2008. I disagree.

[32] The IAD's treatment of the period 2006–2008 went to the issue of the development of the relationship between Ms. Moossavi-Zadeh and Mr. Yildirim, which in turn was very relevant to the issues of the *bona fides* of that relationship and the intentions of the couple at that time. In any event, after treating the evidence pertaining to those years, the IAD proceeded to discuss the evidence regarding Ms. Moossavi-Zadeh's pregnancies and abortions in approximately 2009, the ring that Mr. Yildirim gave her in March of 2009, when he proposed to her; their living arrangements during the period 2005–2013; the visits of Ms. Moossavi-Zadeh's mother and sisters in 2009 and 2010; the timing of their initial discussions of Ms. Moossavi-Zadeh's sponsorship of Mr. Yildirim for permanent residence in Canada, shortly after their marriage at the end of 2012; the visits that Ms. Moossavi-Zadeh made to Turkey after Mr. Yildirim went back to that country in 2013; an interview that he gave to the CBSA in 2013; his divorce from

his Second Wife in 2012; the telephone bills that continued to be sent to his address on Whiting Way after he claimed to have moved in with Ms. Moossavi-Zadeh on Welcher Avenue; the marriage of Mr. Yildirim's first wife to his co-worker in 2013; and the evidence provided by Mr. Yildirim's father regarding their civil marriage in 2012 and his lack of awareness of their religious marriage.

[33] A related submission made by Ms. Moossavi-Zadeh is that the IAD did not consider or sufficiently consider various items of evidence that post-dated their civil marriage in December 2012. Insofar as much of that evidence relates to whether the relationship between Ms. Moossavi-Zadeh and Mr. Yildirim is now genuine, it is not relevant to the issue of whether their relationship was entered into primarily for the purpose of acquiring any status or privilege under the IRPA, as contemplated by paragraph 4(1)(a) of the Regulations.

[34] I recognize that some of the evidence that post-dates the couple's civil marriage may well have a bearing on the nature of their respective intentions at the time of that marriage. However, I am satisfied that the nature of the findings that were reasonably made with respect to the credibility of Ms. Moossavi-Zadeh and Mr. Yildirim is such that it was reasonably open to the IAD to then refrain from specifically mentioning the evidence that Ms. Moossavi-Zadeh claims ought to have been addressed in the Decision. This is particularly so given that the evidence in question simply corroborates the fact that the marriage and alleged honeymoon took place, that it was supported by family and friends, and that the couple's relationship continued to develop (through ongoing communications and Ms. Moossavi-Zadeh's visits to Turkey to visit Mr. Yildirim), to the point that their marriage may well now be genuine.

[35] An additional submission made by Ms. Moossavi-Zadeh is that the IAD did not consider or reference evidence that corroborated the evidence that she and Mr. Yildirim gave regarding the latter's relationship with Mr. Recep Gemlik and the couple's knowledge of Mr. Gemlik's relationship with Mr. Yildirim's first wife.

[36] Mr. Gemlik was one of Mr. Yildirim's co-workers for two or three years. He allegedly was a friend of Mr. Yildirim's roommate on Whiting Way, who allowed Mr. Gemlik to use that address for certain mail communications. Mr. Yildirim continued to allow Mr. Gemlik to use his address for that purpose, after his roommate moved out. Apparently unbeknownst to Mr. Yildirim, those communications included exchanges with Mr. Yildirim's first wife, whom Mr. Gemlik decided to marry, notwithstanding that he had a girlfriend and a child at that time.

[37] The evidence that Ms. Moossavi-Zadeh alleges was not considered includes a transcript of Mr. Gemlik's interview with a representative of the CBSA, as well as affidavit evidence provided by Mr. Gemlik and his co-workers. Those affidavits state that Mr. Gemlik did not reside at Mr. Yildirim's address on Whiting Way, and that he and Mr. Yildirim were only co-workers who interacted once in a while.

[38] I am satisfied that the affidavits of Mr. Gemlik and his co-workers were among the affidavits and other evidence explicitly referenced by the IAD at paragraphs 53 and 54 and of its Decision.

[39] In my view, the nature of the credibility findings that were reasonably made by the IAD with respect to the testimony provided by Ms. Moossavi-Zadeh and Mr. Yildirim was such that the IAD was not obliged to specifically address the contents of the affidavits of Mr. Gemlik and

his co-worker. In other words, having reasonably found that the evidence of Ms. Moossavi-Zadeh and Mr. Yildirim was so “convoluted and at times internally inconsistent,” as to be not credible or trustworthy (Decision, paragraphs 49 and 55), it was unnecessary for the IAD to specifically note that some aspects of their inconsistent evidence had been corroborated by third parties, including Mr. Gemlik and his co-workers. It was sufficient for the IAD to refer to that third party evidence in the general manner that it did, at paragraphs 53 and 54 of its lengthy Decision. This is particularly so given what the IAD reasonably characterized as being “the very improbable circumstances of the serendipitous connection between [Mr. Gemlik] and the applicant’s first wife” and his two unsuccessful sponsorships of her for permanent residence in Canada. On the particular facts of this case, it was reasonably open to the IAD to disbelieve the evidence of Mr. Yildirim and Mr. Gemlik regarding the genuineness of the latter’s marriage to the former’s first wife.

[40] Among other things, the inconsistencies in the testimony of Ms. Moossavi-Zadeh and Mr. Yildirim concerning his first wife related to Ms. Moossavi-Zadeh’s knowledge of the contact between Mr. Yildirim and his first wife, the nature and extent of the communications between Mr. Yildirim and his first wife, and his first wife’s knowledge of where he lived.

[41] The IAD also found that Mr. Yildirim’s evidence regarding his knowledge of his first wife’s desire to move to Canada was not credible. This finding was not unreasonable, particularly given that Mr. Yildirim had been in regular contact with his sons as well as with his first wife, and given that there were important inconsistencies in Mr. Yildirim’s testimony regarding the extent of his contact with his first wife, and her knowledge of where he lived.

[42] I will simply note in passing that, in his interview with the CBSA, Mr. Gemlik acknowledged that he proposed to Mr. Yildirim's first wife on the same day that they met, that he could not recall when he proposed to her or when they were married, and that he did not know whether they were still married.

[43] In her written materials, Ms. Moossavi-Zadeh also submitted that the IAD failed to conduct a *de novo* hearing, as it is required to do (*Castellon Viera v Canada (Citizenship and Immigration)*, 2012 FC 1086, at para 10). However, at the hearing of this Application, her counsel clarified that Ms. Moossavi-Zadeh simply meant that the IAD had not sufficiently considered the evidence that I have now addressed in these reasons above. Accordingly, there is nothing further to be considered in this regard.

[44] Ms. Moossavi-Zadeh further asserts that the IAD erred by failing to presume the truthfulness of the testimony that she and Mr. Yildirim gave. However, that presumption fell away as soon as the IAD made adverse credibility findings with respect to important aspects of their testimony.

[45] Finally, Ms. Moossavi-Zadeh submits that the IAD erred by failing to consider important evidence that contradicted the conclusions that it reached regarding her and Mr. Yildirim's intentions at the time of their civil union in December 2012, and regarding the genuineness of their marriage. The evidence in question is the evidence that I have already addressed in these reasons for judgment above. It is therefore unnecessary to address it again.

VIII. Conclusion

[46] For the reasons set forth above, this application is dismissed.

[47] The Decision was not unreasonable, either as a whole, or for any of the reasons advanced by Ms. Moossavi-Zadeh.

[48] In my view, it was not unreasonable for the IAD to have concluded, after a fairly extensive assessment of the testimony provided by Ms. Moossavi-Zadeh and Mr. Yildirim, and having regard to the documentary evidence, that Ms. Moossavi-Zadeh had not met her burden of establishing on the balance of probabilities that her marriage to Mr. Yildirim was not entered into primarily for the purpose of acquiring any status or privilege under the IRPA.

[49] That conclusion fell well within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. It also fit comfortably within the principles of justification, transparency and intelligibility.

[50] The parties did not suggest a question for certification. Given the highly fact-specific nature of the findings reached by the IAD, I find that no such question arises from its Decision.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. There is no question for certification.

“Paul S. Crampton”

Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2348-16

STYLE OF CAUSE: ENSIEH-ALSADAT MOOSSAVI-ZADEH v THE
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