

Federal Court



Cour fédérale

Date: 20180209

Docket: IMM-687-17

Citation: 2018 FC 155

Calgary, Alberta, February 9, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ALEM TESFU GARZA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Alem Tesfu Garza (the “Applicant”) seeks judicial review of a decision of the Immigration and Refugee Board, Immigration Appeal Division (the “IAD”) dated December 2, 2016, dismissing his appeal from a decision of an Officer refusing his sponsorship application for his wife.

[2] The Applicant, a permanent resident of Canada who is originally from Eritrea. He met his wife in 2008 and married her in 2011. The Officer refused the sponsorship application on the grounds that the marriage was entered into for the purpose of acquiring status in Canada for his wife's daughter.

[3] The IAD heard evidence from the Applicant, his wife and his step-daughter. In dismissing the appeal, the IAD concluded that the marriage was entered into primarily for immigration purposes, contrary to section 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[4] The decision of the IAD is reviewable on the standard of reasonableness; see the decision in *Dobson v. Canada (Citizenship and Immigration)*, 2011 FC 121. According to the decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190, the reasonableness standard requires that a decision be transparent, justifiable and intelligible, and falls within a range of possible acceptable outcomes.

[5] The issue of alleged bias is an aspect of procedural fairness and is reviewable on the standard of correctness.

[6] Considering the evidence before the IAD, as contained in the Certified Tribunal record including the transcript of the proceedings before the IAD, I am not satisfied that the decision under review meets that standard.

[7] In my opinion, the IAD imposed stereotypical views about the marriage of mature persons and failed to reasonably consider the evidence presented about the relationship between the Applicant and his wife, including the history of the development of that relationship.

[8] I agree with the submissions of the Applicant that the IAD mischaracterized the evidence about his financial position and that this mischaracterization may have led to unjustified factual findings.

[9] I do not find support for any allegations of bias, but the ultimate conclusion of the IAD does not meet the applicable standard or review and this application for judicial review will be allowed.

[10] The matter will be remitted to a differently constituted panel of the IAD for redetermination, no question for certification arising.

JUDGMENT for IMM-687-17

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the matter is remitted to a differently constituted panel of the Immigration Appeal Division, no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-687-17

STYLE OF CAUSE: ALEM TESFU GARZA v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 23, 2017

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 9, 2018

APPEARANCES:

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FOR THE APPLICANT

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