

Federal Court



Cour fédérale

Date: 20180215

Docket: IMM-2632-17

Citation: 2018 FC 180

Ottawa, Ontario, February 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

LOVETH IYARE

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Iyare brings this judicial review application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of the Immigration and Refugee Board of Canada, Immigration Appeal Division's [IAD] dismissal of an appeal from a visa officer's [Officer] denial of her husband's permanent residency application on the basis that their marriage was not genuine.

[2] Ms. Iyare has not demonstrated that the decision was unreasonable or that the IAD otherwise committed a reviewable error. For the reasons set out below this application for judicial review is dismissed.

II. Background

[3] Ms. Iyare was born in Nigeria. She arrived in Canada in 2005 as a refugee and is now a Canadian citizen. She divorced her former husband in February 2012. In April 2012, she travelled to Nigeria and married her current husband, Jerry Iyare, a Nigerian citizen. Ms. Iyare then sponsored her husband's application for a permanent residence visa under the spousal class.

[4] The application was denied on the grounds that the marriage was not genuine. Upon appeal to the IAD, the panel addressed whether the marriage was genuine or whether it had been entered into primarily to acquire status or privilege under the IRPA as set out in section 4.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[5] In its decision, the IAD recognized that the appeal is a hearing *de novo* and that new evidence is admissible. The IAD then noted and addressed the grounds of appeal. The IAD concluded that the Officer had not proceeded in a procedurally unfair manner, and further noted that had there been any procedural defect it was cured by the *de novo* appeal.

[6] The IAD then considered whether the marriage was genuine. First, the IAD observed that the credibility of Ms. Iyare and her husband were important as documentary evidence would not determine the outcome of the appeal. The IAD then stated that credibility is to be tested against

what "...a practical and informed person would reasonably recognize as reasonable in that place and in those conditions." In applying the test, the IAD stated that it was mindful of cultural differences and then noted that in a number of areas the evidence of Ms. Iyare and her husband made no sense when evaluated against the test. In assessing the genuineness of the marriage, the IAD focused on: (1) the amount of time Ms. Iyare and her husband spent together before and after the wedding; (2) their knowledge of each other's respective relationship histories; and (3) their knowledge of each other's daily lives.

[7] In considering each of these factors, the IAD identified concerns and inconsistencies with the evidence of Ms. Iyare and her spouse. The IAD ultimately concluded that no single piece of evidence was determinative, however, when considering all the evidence together it concluded that it was more likely than not that this marriage was not genuine. Having found the marriage not genuine, the IAD indicated it was not necessary to address the question of the primary purpose of the marriage but did so in any event. The IAD concluded that the marriage's primary purpose was to gain status or privilege under IRPA.

III. Issues

[8] The sole issue Ms. Iyare raises in the application is the reasonableness of the IAD's decision. She submits that the IAD misconstrued evidence and failed to fully consider evidence that demonstrated the genuine nature of the marriage.

IV. Standard of Review

[9] The IAD's determination that the marriage was not genuine and was entered into primarily for the purpose of acquiring status or privilege under IRPA involves questions of mixed fact and law and is reviewable against a standard of reasonableness (*Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at para 17; *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 at para 17; *Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 at para 15).

[10] In reviewing the reasonableness of a decision, the Court will not intervene where the decision-making process reflects the elements of justification, transparency and intelligibility and the outcome falls within the range of possible acceptable outcomes based on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

V. Analysis

[11] Ms. Iyare submits that the IAD ignored her evidence and preferred the Officer's erroneous findings. She contends that the IAD's credibility findings are unreasonable and the IAD did not meaningfully address procedural fairness concerns. She further submits that in misstating the date of separation from her former husband, the IAD committed a reviewable error. I am unable to agree.

[12] The IAD heard *viva voce* evidence from both Ms. Iyare and her husband in the course of the *de novo* appeal. Having considered the *viva voce* evidence and the documentation contained

in the appeal record the IAD identified a long list of inconsistencies that raised credibility concerns. The inconsistencies included discrepancies as to when the marriage proposal was made, the very limited time the couple spent together after the marriage despite apparent opportunities to meet in third locations, their limited knowledge of each other's relationship histories and their limited knowledge of each other's daily lives including knowledge of a serious health situation that resulted in Ms. Iyare's hospitalization. These inconsistencies were brought to the attention of Ms. Iyare and her husband in the course of their testimony before the IAD, and the credibility findings are, for the most part, not disputed.

[13] The IAD did not ignore evidence demonstrating the genuine nature of the relationship as Ms. Iyare contends. Rather the IAD acknowledged the evidence of communications, of fund transfers and of the purchase of a vehicle. However, the IAD also noted the frailties of this evidence including: (1) the absence of receipts to support claimed fund transfers; and (2) the absence of any evidence of communications prior to 2014. The IAD concluded that this evidence was simply not sufficient when considered with all of the evidence to demonstrate the existence of a genuine relationship. Although, Ms. Iyare disagrees with the IAD's conclusion, I am satisfied that the IAD addressed the evidence in detail, identified unexplained gaps and articulated its concerns.

[14] Ms. Iyare submits that in misidentifying her date of separation from her former husband the IAD committed a reviewable error. The IAD did misidentify the date of separation as January 1, 2017 as opposed to the reported dated of January 17, 2012. However, in reviewing the decision, it is evident that the IAD was well aware of the timing of the separation in relation to

other reported significant events in respect of the marriage and I am left to agree with the respondent. The error, albeit unfortunate, is a typographical error that does not impact upon the overall findings. The misidentified date of separation does not impact upon the reasonableness of the decision (*Calderon Garcia v Canada (Minister of Citizenship and Immigration)*, 2012 FC 412 at para 16; *Huseynova v Canada (Minister of Citizenship and Immigration)*, 2011 FC 408 at para 7).

[15] Ms. Iyare further contends that the IAD addressed her procedural fairness concerns in a capricious and dismissive manner. The decision does not support this contention. The IAD noted that the applicant's submissions regarding procedural fairness were limited. Nonetheless, the IAD addressed the argument that the procedural fairness letters did not provide an adequate opportunity to respond to the Officer's concerns and found it to be factually inaccurate. The IAD indicated that letters were sent, responses were provided and the content of the responses were assessed by the Officer prior to rendering a decision. The IAD found that the Officer's concerns were identified and an opportunity provided to respond to those concerns. The IAD further noted that in any event any fairness breach was cured by the *de novo* appeal. The IAD did not commit a reviewable error in addressing Ms. Iyare's procedural fairness concerns.

VI. Conclusion

[16] The IAD's decision is reasonable. The application is dismissed.

[17] The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT in IMM-2632-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2632-17

STYLE OF CAUSE: LOVETH IYARE v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 7, 2017

JUDGMENT AND REASONS: GLEESON J.

DATED: FEBRUARY 15, 2018

APPEARANCES:

Mr. Simeon A. Oyelade

FOR THE APPLICANT

Mr. Brad Bechard

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Simeon A. Oyelade
Barrister & Solicitor
North York, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT