Federal Court  Cour fédérale

Date: 20180321

Docket: IMM-4051-17

Citation: 2018 FC 323

Ottawa, Ontario, March 21, 2018

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

MANVINDER KAUR PARMAR

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Manvinder Kaur Parmar, applied to sponsor her second husband, Jatinder Singh Minhas, for permanent residency in Canada. After conducting an interview with Mr. Minhas, a visa officer with the Immigration Division in New Delhi (the Officer) determined their marriage was made in bad faith pursuant to sections 4(1)(a) and(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] and refused the application. The

Applicant appealed this decision to the Immigration and Refugee Board of Canada, Immigration Appeal Division [the IAD]. On August 21, 2017, the IAD dismissed the appeal.

[2] The Applicant has now applied to the Federal Court for judicial review of the IAD decision. I find that the IAD decision was both reasonable and procedurally fair. Accordingly, this application is dismissed for the reasons that follow.

II. Background

[3] The 35 year old Applicant was born in India. In 2007, she was sponsored to Canada by her sister. One year later, she married her first husband, Kamaljit Singh (who was also from India) but could not sponsor him because she said he had no travel documents. Her evidence was they divorced in 2012 due to domestic abuse, "womanizing" and other unsavory habits of her husband. On January 31, 2014, the Applicant married her second husband, Jatinder Singh Minhas, who lives in India.

[4] The Applicant applied to sponsor Mr. Minhas for permanent residency in Canada. He was subsequently interviewed by an Officer with the help of a translator. Based on the interview, the Officer concluded there were many factors indicative of a bad faith marriage pursuant to sections 4(1)(a) and (b) of the IRPR. For example, signs of incompatibility in Indian culture were apparent in this case —the Applicant was previously divorced and has a higher education than Mr. Minhas. Other factors the Officer gave weight to were that: they knew little about each other, their marriage was made in haste, Mr. Minhas could not remember when his older brother got married (even though this was stressed by both parties that it was important because in Indian

culture older siblings should be married first), and finally, he did not know what his wife had studied or her degree.

[5] In a decision dated November 17, 2015, the Officer denied the sponsorship application, and the Applicant appealed this decision to the IAD. The IAD appeal was held on June 22, 2017, at which time the Applicant attended in person, and her husband telephoned from India to make submissions.

[6] The IAD found that the hearing generated more questions rather than answer them, and, on a balance of probabilities, found the Applicant and her husband was not credible. One reason the IAD felt the Applicant is not credible was due to her confusing and conflicting testimony regarding her first marriage, which was "baffling and shifting." The IAD especially questioned why her family would not follow tradition by waiting to find a match for her older sister. The IAD agreed with the Respondent that the Applicant made-up this story to prevent another conclusion that her marriage was too hasty to be genuine.

[7] When the IAD asked questions about the Applicant's higher education level, it felt her husband's answers again illustrated that he did not know her well and that their marriage is not genuine or was entered into to achieve an immigration advantage. For example, the husband says he told the Officer that his wife has an MBA, but the Officer erroneously wrote down that he had replied she has a BA. Yet as pointed out by the IAD, the Applicant does not have a BA or an MBA; she has a Master's degree in Punjabi. Other answers given during the hearing also did not

align with written answers provided by the parties earlier in a questionnaire. For instance, conflicting proposal and marriage dates were provided.

[8] The IAD was also troubled by the objective evidence. For instance, although the Applicant said that 300-350 people attended her wedding, the IAD noticed there were not that many people present in the photos. The Applicant responded that due to bad weather half of the attendees were indoors when the photos were taken. In addition, the Applicant, who lived with her brother, submitted phone records to demonstrate her communications with her husband. But the IAD gave the phone records little weight because it couldn't tell who was making the phone calls. The IAD found the objective evidence could not overcome the credibility concerns.

[9] In a decision dated August 21, 2017, the IAD dismissed the appeal. The Applicant filed for judicial review of this decision on September 22, 2017.

III. Issue

[10] The issue is:

> Was the IAD's decision that the marriage is not genuine and was entered for a primary purpose to gain permanent residence to Canada unreasonable?

IV. Standard of Review

[11] Decisions about whether a marriage is entered into in bad faith pursuant to section 4(1) of the IRPR are reviewed on a reasonableness standard (*Kim v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1141 at para 9 [*Kim*]).

V. Analysis

A. *Did the Officer engage in an unreasonable assessment of the Applicant's credibility?*

[12] The Applicant says that it is especially important to note that the IAD hearing was an entire day, and this length gave the Applicant and Mr. Minhas time to explain everything. Meanwhile, Mr. Minhas' prior interview with the Officer was only 15 minutes. During these 15 minutes, Mr. Minhas says the Officer yelled at him, and he made some mistakes because he was nervous.

[13] The Applicant's argument is that the IAD just did not understand that her explanations and statements made perfect sense. In particular, she says the IAD ignored her explanations to questions like:

- why her husband proposed 12 years before their marriage (she accepted another proposal instead);
- why the marriage was not made in haste (she explained how long it took especially as her older sister had to marry first);
- why her husband is 34 years old (cultural rules dictated his brother get married first);
- why her husband has a lower education level (her own degree is not recognized in Canada, and she wanted someone who could work right away in Canada and is a vegetarian);

- why all the phone bills, submitted for evidence of communication, were in her brother's name (she lived with her brother and brother-in-law who had a $10.00 a month long distance plan which she used).

[14] The Applicant submits that the IAD erred by doubting her credibility because her statements should be believed unless contradicted, internally inconsistent, or implausible (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA); *Armson v Canada (Minister of Employment and Immigration)* (1989), 9 Imm LR (2d) 150 (FCA)). The Applicant further argues the IAD used an irrelevant factor (her prior marriage and divorce from another man) to analyse her credibility.

[15] She also said although her current husband did not know her ex-husband threatened her with a knife, the IAD ignored the many other things he did know especially as his evidence is the Officer yelled at him.

[16] As is the case in many judicial reviews of marriages of convenience, it must be stated that of course the test is not what I would decide given the evidence nor is it if the decision maker is correct. Reasonableness requires that the decision must exhibit justification, transparency, and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[17] The IAD has the advantage of interviewing the parties in person after they conduct a *de novo* review (*Kim* at para 8; *Trieu v Canada (Minister of Citizenship and Immigration)*, 2017 FC 925 at para 1[*Trieu*]).

[18] Deference is owed to the IAD, as it is in a better position to assess the evidence, having heard the oral testimony, and "as long as the IAD draws inferences that are reasonably open to it based on the evidence, it is not appropriate for the Court to interfere" (*Valencia v Canada (Minister of Citizenship and Immigration),* 2011 FC 787 at para 24).

[19] In this case, the IAD did not believe the husband about his interview experience and said why they did not believe the officer acted as he had described. The IAD found the IAD hearing did not clarify the issues and actually created further issues, left unanswered questions unanswered, and at times felt baffled by the Applicant's answers.

[20] The IAD's reasons illustrate it was concerned with the omission of various facts until the hearing. For instance, the IAD questioned the current husband about why he did not know about his wife's marital history until the hearing. The IAD found his manner of answers indicative of a rehearsed story, and did not believe what he said happened at the interview because it did not make sense.

[21] He says he was not provided a full opportunity to respond, but the IAD reviewed the Officer's interview notes, and found it indicates he did have a full opportunity to respond. The IAD explained this concern in full:

> [20] When asked at the hearing about this failure to provide information at the visa office during the interview, the applicant stated that the [visa officer] was speaking in a strange manner and he could not figure out if he was trying to fight him. This made him nervous, and he said that when he tried to explain his answers, the [visa officer] would start speaking loudly and would ask the next question. I have carefully reviewed the notes from the [visa officer] and I do not find the applicant's testimony to be persuasive. The notes are detailed, an interpreter was used, and the applicant was told to seek clarification if required. The notes also reflect both the questions and the applicant's answers to the questions posed. I find instead that the applicant did not know the

> answers about the reasons for the breakdown of the appellant's first marriage at the time of the interview, and he should have if he was told the reasons since they are memorable. This again suggests that the marriage is not genuine or was entered into for an immigration purpose.

[22] And although the Applicant argued that questions about her prior marriage are irrelevant to the bad or good faith of her current marriage, the jurisprudence has established that marital history is a relevant factor (*Khera v Canada (Citizenship and Immigration),* 2007 FC 632 at para 10; *Trieu* at para 30). So I can find no error in the IAD's questions.

(1) The Evidence

[23] The Applicant did agree with the Court that she has the onus to present evidence to satisfy CIC that the marriage is not of the kind described in section 4(1) of the IRPR, but says that there is some duty for the Officer to go through the concerns so that the concerns can be addressed. The Applicant argued the burden in this case is just too high to show they were together.

[24] For example, the Applicant submits the IAD drew a contradictory conclusion about the photographs entered into evidence. Namely, she says the IAD cannot say that the photographs show the Applicant and her husband at different locations, while also saying that the photographs do not show that she traveled to India for the purpose of spending time with her husband. She tendered that the IAD erred by summarizing her 325 pages of photographs into two paragraphs of analysis.

[25] The reasons illustrate that the IAD considered the photographs, but due to credibility concerns said “they are not sufficient to overcome the concerns that I have already identified with respect to the genuineness of the marriage.” This is directly within the jurisdiction of the IAD and the Court does not reweigh evidence on judicial review. Furthermore, I see no error in summarizing documents as long as no evidence is ignored.

[26] The Applicant suggested that the Officer erred by being concerned that incomplete divorce documentation was submitted as well as concerned that her husband did not know the reason for the divorce. She says she submitted all the necessary documentation for her appeal to the IAD. She did not, however, explain how the Officer wanting the complete divorce document rather than just the decree and her husband not knowing why she divorced would make the decision unreasonable or procedurally unfair.

[27] The Respondent explained that the IAD wished to have these documents because the official application says the reason for the marriage breakup, and the IAD would use this information to test whether the answers given by the husband (and later the wife) were the same as what was in the documents.

[28] The Applicant’s argument must fail as this is a reasonable reason to request the documents to corroborate the evidence being given.

[29] The IAD considered all the evidence but, due to credibility concerns, it gave positive evidence less weight than it would have otherwise. The IAD did not make this decision unreasonably.

[30] These decisions are difficult as they are being reviewed on a reasonableness standard and not whether I would make the same decision on the same evidence. I do find that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. In addition, this decision was justified, transparent, and intelligible, and therefore I will dismiss the application.

[31] No certified question was presented or arose.

JUDGMENT in IMM-4051-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4051-17
STYLE OF CAUSE:	MANVINDER KAUR PARMAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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