

Federal Court



Cour fédérale

Date: 20180406

Docket: IMM-3762-17

Citation: 2018 FC 370

Ottawa, Ontario, April 6, 2018

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

ASAKO HACHINOHE

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision by the Immigration Appeal Division [IAD] dismissing an appeal of the refusal of a spousal sponsorship application. The IAD confirmed that the Applicant had not established that the marriage was genuine and that the marriage was not entered into primarily for the purpose of acquiring status under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

II. Facts

[2] The Applicant, a 44 year old woman born in Japan, became a permanent resident on humanitarian and compassionate [H&C] grounds following the breakdown of her abusive marriage to a Ghanaian man which ended in divorce.

[3] Christopher Igolo came to Canada from Nigeria illegally in 2007 and made a refugee claim. He met the Applicant in May 2009, moved in with her in August 2009, but moved out in January 2010.

[4] Igolo's refugee claim was denied in May 2010 and one month later the couple obtained a marriage licence for a July 17, 2010 wedding. That wedding did not take place.

[5] Following Igolo's unsuccessful H&C application and negative PRRA, he was removed to Nigeria in March 2012.

[6] The couple were married in Nigeria in May 2012, and stayed together for one month in Nigeria before the Applicant returned to Canada. They have not seen each other since.

[7] On July 22, 2013, the Applicant applied to sponsor Igolo. This application was denied. The Officer, having interviewed Igolo, concluded that while the couple were friends, the marriage was one of convenience to facilitate immigration. Of particular concern was Igolo's

lack of knowledge of the Applicant, the lack of evidence of their relationship, and Igolo's immigration history.

[8] The IAD essentially upheld the Officer's findings. Having considered the relevant factors, including length of time together before marriage and knowledge of each other's histories, the respective testimonies were found not to be sufficiently credible, trustworthy, or reliable to overcome the Officer's and the IAD's concerns.

[9] These concerns included the following:

- an inconsistency regarding the address at which the parties cohabitated;
- a lack of evidence of having lived together as a couple;
- a lack of credibility in the Applicant moving in with Igolo after three months in the absence of sufficient evidence of mutual trust;
- evidence of Igolo's texts telling the Applicant about his hobbies, favourite foods, and living history in preparation for the IAD hearing;
- other evidence of deception;
- evidence that the marriage licence was obtained a month after rejection of the refugee claim and marriage occurred two months after removal, which showed a correlation between Igolo's immigration history and the relationship's progress;
- general and unspecific evidence of the relationship; and
- a new excuse for the Applicant not visiting Igolo in Nigeria, raised for the first time at the end of the third sitting of the hearing, was found not credible.

III. Analysis

[10] The standard of review on a matter of mixed law and fact is settled as reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190).

[11] The IAD noted at least eleven inconsistencies, credibility issues and/or implausibilities. The gist of the Applicant's argument is an invitation to the Court to review, reweigh, and re-decide the case. That is not the function of this Court on judicial review.

[12] The Applicant argues that findings which were factors in the IAD's deliberations and conclusion are each a determinative factor for the IAD and therefore an unsound basis for the decision.

[13] This is not a fair representation of the thorough analysis performed by the IAD. Some factors obviously weighed more heavily than others but the IAD weighed each on its own and in context to arrive at its conclusion. Clearly the evidence of Igolo informing his wife of his personal habits and preferences (matters which most couples know) weighed heavily against the Applicant's case – as it should. There was a pattern of “cooking” the evidence which reasonably caused significant credibility concerns.

[14] That fact, weighed alongside a history of running the relationship in parallel to the immigration proceedings and the other problems with the case, constituted reasonable grounds for the IAD's conclusion.

[15] Contrary to the Applicant's argument that the IAD did not consider the totality of the evidence, the IAD did precisely that. The IAD did not ignore the documentary evidence, but simply found that there were too many problems with the other evidence to satisfy the burden imposed on the Applicant.

[16] While the Applicant may have been credible and may have a genuine, subjective interest in being married, this was undermined by the conduct of Igolo and the other evidence when considered objectively.

IV. Conclusion

[17] Therefore, I find that the decision is reasonable.

[18] This judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-3762-17

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

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3762-17

STYLE OF CAUSE: ASAKO HACHINOHE v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: PHELAN J.

DATED: APRIL 6, 2018

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