Date: 20181017

Docket: IMM-1517-18

Citation: 2018 FC 1041

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 17, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

GIA PHONG HUA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Gia Phong Hua, is a Canadian citizen of Vietnamese origin. He is 62 years old. He wishes to sponsor his wife, Thi Chau Loc Nguyen, a Vietnamese citizen. She is 32 years old.

[2] In November 2011, Ms. Nguyen contacted Mr. Hua for the first time by phone at the suggestion of her aunt, who is also Mr. Hua's former sister-in-law. One month later, Mr. Hua sent money to Ms. Nguyen so she could support herself and her daughter who was almost 2 years old. On April 16, 2012, Mr. Hua went to Vietnam where he met Ms. Nguyen for the first time in person and married her eight days later. On May 27, 2012, Mr. Hua returned to Canada without Ms. Nguyen. The spouses have not seen each other since Mr. Hua's return to Canada because he does not like airplanes.

[3] In September 2012, Ms. Nguyen filed an application for permanent residence as a member of the family class. Her application, sponsored by Mr. Hua, was rejected on December 15, 2014, by an immigration officer at the High Commission of Canada in Singapore. He felt that the marriage was not genuine and was entered into primarily for the purpose of the applicant acquiring status under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Mr. Hua appealed from the decision with the Immigration Appeal Division [IAD].

[4] On March 12, 2018, the IAD dismissed Mr. Hua's appeal. It indicated that the circumstances under which Mr. Hua was put into contact with Ms. Nguyen, the haste of their union and the feelings expressed by Mr. Hua about what prompted him to marry Ms. Nguyen led it to conclude that the main purpose of their union was to allow Ms. Nguyen to enter Canada.

[5] Mr. Hua is seeking judicial review of that decision. He submits that the IAD's findings with regard to the main purpose of the marriage are unreasonable and also, that the findings with

regard to Ms. Nguyen's credibility do not meet the criteria of justification, transparency and intelligibility stated in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[6] After reviewing the record and the decision, the Court feels there are no grounds to intervene.

II. Analysis

[7] The two parties agree that the standard of review applicable to the finding that a marriage is not genuine or was entered into for the primary purpose of acquiring status or privilege under the IRPA is reasonableness because it raises questions of fact and law. As a specialized tribunal, the IAD's decisions must be reviewed with deference. (*Parmar v Canada (Citizenship and Immigration)*, 2018 FC 323 at para 11; *Onwubolu v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 19 at para 11 [*Onwubolu*]; *Trieu v Canada (Citizenship and Immigration)*, 2017 FC 925 at paras 19-20 [*Trieu*]).

[8] The question of the adequacy of reasons is also subject to the same standard of review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-16 [*Newfoundland Nurses*].

[9] When the reasonableness standard applies, the role of the Court is to determine whether the decision falls within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law." When "justification, transparency and intelligibility within the decision-making process" exist, it is not open to the Court to substitute its own preferred

outcome (*Dunsmuir* at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Newfoundland Nurses* at paras 14-18).

[10] Subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] states the following:

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.

[11] Considering the disjunctive nature of paragraphs 4(1)(*a*) and 4(1)(*b*) of the IRPR, the burden was on Mr. Hua to present the evidence needed to demonstrate that the marriage was genuine at the time of the hearing before the IAD and that it was not entered into for the purpose of acquiring a status in Canada at the time of the marriage (*Onwubolu* at paras 13, 15; *Trieu* at para 37).

[12] In this case, the IAD dismissed Mr. Hua's appeal on the ground that it considered that the marriage was entered into primarily for the purpose of acquiring a status or privilege for

Ms. Nguyen under the IRPA. To reach this conclusion, the IAD relied mainly on Mr. Hua's testimony, which it deemed credible and reliable. The IAD noted, however, that Mr. Hua made several mentions of Ms. Nguyen's personal and difficult situation when they met. It also noted that Mr. Hua testified several times that when he was dating Ms. Nguyen, he told himself that he had to do something for her and her daughter because she spoke like a depressed person and he knew that he had the possibility to give her and her daughter a better life. The IAD also noted Mr. Hua's testimony about his brothers who allegedly told him that if he wanted to be able to bring Ms. Nguyen to Canada, he had to marry her in Vietnam. In light of this testimony and considering the circumstances under which the spouses met and the haste of their union, the IAD could reasonably conclude that the primary purpose of this union was to enable Ms. Nguyen to enter into Canada.

[13] Additionally, the Court cannot agree with Mr. Hua's argument that the IAD rejected the application for sponsorship on the sole ground that during her testimony Ms. Nguyen did not acknowledge the difficult situation she was in or because it did not find Ms. Nguyen to be credible. The IAD instead chose to grant more weight to Mr. Hua's testimony, finding that he was more open to the questions asked. Even though the IAD did not necessarily consider Ms. Nguyen's testimony to be in bad faith, it did find that Ms. Nguyen was less spontaneous and she replied to the questions asked according to a scenario that focused on the feelings the spouses had for each other, while overlooking the context that led to their meeting. It was the IAD's responsibility to assess the evidence presented, particularly the testimony of Mr. Hua and Ms. Nguyen. It is not the role of this Court, in a judicial review, to reassess and weigh this

evidence (*Onwubolu* at para 21; *Truong v Canada (Citizenship and Immigration),* 2017 FC 422 at para 37; *Nguyen v Canada (Citizenship and Immigration)*, 2016 FC 1207 at paras 13, 31).

[14] As the IAD did, this Court recognizes that spouses may, in time, become attached to each other to the point the marriage becomes genuine. Prior to the reformulation of subsection 4(1) of the IRPR in September 2010, the criteria were conjunctive. A marriage that, initially, was entered into primarily for the purpose of acquiring a status of privilege, could become genuine in time, thereby allowing a sponsorship application. According to the former definition, Ms. Nguyen could have joined Mr. Hua in Canada. However, since the 2010 amendment, Ms. Nguyen cannot be considered as a member of the family class nor is she eligible for sponsorship by Mr. Hua considering the IAD finding that the marriage was entered into primarily for the acquisition of a status under the IRPA (*Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077 at paras 5-7). Although evidence of present genuineness of the marriage may, in certain circumstances, be relevant to the assessment of the primary purpose of the marriage, this evidence is not determinative. In other words, even if the relationship is currently genuine, this would not be sufficient to establish that the marriage was not entered into for immigration purposes (*Trieu* at para 34).

[15] Considering the above, the Court feels that the IAD decision falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" and it is justified in a manner that meets the criteria of transparency and intelligibility of the decision-making process (*Dunsmuir* at para 47).

[16] As a result, the application for judicial review is dismissed. No question of general importance was submitted for certification and the Court feels that this case does not give rise to any.

JUDGMENT in docket IMM-1517-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

Translation certified true
on this 7th day of November 2018.
Elizabeth Tan, Translator.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1517-18
STYLE OF CAUSE:	GIA PHONG HUA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 1, 2018
JUDGMENT AND REASONS:	ROUSSEL J.
DATE OF REASONS:	OCTOBER 17, 2018

APPEARANCES:

David Chalk	FOR THE APPLICANT
Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chalk Immigration Lawyers Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT