

Federal Court



Cour fédérale

**Date: 20200831**

**Docket: IMM-6707-19**

**Citation: 2020 FC 869**

**Ottawa, Ontario, August 31, 2020**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**FATHIA ALI OSMAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Fathia Ali Osman [Ms. Osman], seeks judicial review of a decision of the Immigration Appeal Division [IAD] dated October 16, 2019. The IAD dismissed her appeal of a decision by an immigration officer refusing to issue a permanent resident visa to her spouse, Kedir Ahmed Musa [Mr. Musa], on the basis that the marriage was not genuine and was entered

into primarily for the purpose of acquiring status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Ms. Osman is a naturalized citizen of Canada, originally from Ethiopia. Mr. Musa is an Ethiopian citizen, residing in that country. Both have children from previous relationships.

[3] They met for the first time in December 2014. Their mothers, who were friends from the same village, arranged the introduction. They exchanged telephone numbers and remained in contact over the next few years. Both Ms. Osman and Mr. Musa were in separate relationships at the time.

[4] By May 2017, both had broken off their previous relationships. Acting on her interest for Mr. Musa, and with the encouragement of their mothers, Ms. Osman proposed marriage to Mr. Musa on June 12, 2017, and he accepted.

[5] In November 2017, Ms. Osman travelled to Ethiopia for the marriage (Nikkah) ceremony. She returned to Canada on December 3, 2017.

[6] In January 2018, Ms. Osman filed an application to sponsor Mr. Musa for Canadian permanent residence as a member of the family class. On October 9, 2018, an immigration officer refused the application because the marriage was not genuine and that it was entered into primarily for immigration purposes, pursuant to subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[7] Ms. Osman appealed the decision of the immigration officer. The IAD heard the appeal on August 8, 2019. Ms. Osman called and examined Mr. Musa, her brother, and two (2) friends as witnesses.

[8] In a decision dated October 16, 2019, the IAD dismissed the appeal. The IAD found that Ms. Osman had not established on a balance of probabilities that her marriage to Mr. Musa was genuine and that it was not entered into for immigration purposes. In reaching this conclusion, the IAD noted that: (1) Ms. Osman and Mr. Musa had provided inconsistent accounts of how their relationship developed; (2) Mr. Musa lacked basic knowledge of Ms. Osman; (3) Mr. Musa generally lacked credibility; (4) there was no evidence of communications with Mr. Musa prior to the wedding; and (5) Ms. Osman and Mr. Musa were unable to express how they were compatible in terms of character and interests.

[9] Ms. Osman seeks judicial review of the IAD's decision. She contends that the IAD misconstrued the nature of the marriage, found inconsistencies where there were none, mischaracterized the testimony of Mr. Musa and failed to assess her objective evidence.

## II. Analysis

[10] The determination of whether a marriage is genuine or entered into for immigration purposes is a question of mixed fact and law, reviewable on a standard of reasonableness (*Bueno v Canada (Citizenship and Immigration)*, 2020 FC 228 at para 12; *Tran v Canada (Citizenship and Immigration)*, 2019 FC 1035 at para 18; *Parmar v Canada (Citizenship and Immigration)*, 2018 FC 323 at para 11).

[11] For a decision to be found reasonable, it must be based on an internally coherent and rational chain of analysis, and it must be justified in relation to the facts and the law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). It must also bear “the hallmarks of reasonableness – justification, transparency and intelligibility” (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[12] Ms. Osman submits that the IAD erred in failing to recognize that her marriage to Mr. Musa was of a hybrid nature, with elements of both an arranged marriage and a “love marriage”. While there had been some mutual interest and they retained the final decision, Ms. Osman and Mr. Musa’s mothers had introduced them and encouraged the marriage. The hybrid nature of the marriage explains the different responses she and her husband provided to the IAD regarding how the relationship developed. Furthermore, Ms. Osman submits that the variation in the testimonies is attributable to a difference of perception, rather than a material discrepancy.

[13] In considering the intent of the parties at the time of their marriage, the IAD noted that the testimony of Ms. Osman and Mr. Musa was often divergent regarding the development of their relationship between 2014, when they first met, and November 2017, when they married. Ms. Osman testified that between 2015 and 2017, she and Mr. Musa had enjoyed numerous flirtatious, romantic conversations and she described how the relationship developed before the wedding. In contrast, Mr. Musa testified that there was nothing romantic between him and Ms. Osman until 2017 and denied that they had romantic conversations before 2017.

[14] I have reviewed the testimony of Ms. Osman and Mr. Musa before the IAD. In my view, the IAD's finding of discrepancy between their respective descriptions of how the relationship began and later evolved is reasonable and not simply due to a difference in perception or the hybrid nature of the marriage.

[15] Ms. Osman argues that Mr. Musa's testimony on this subject was complicated by significant problems of interpretation that were evident on the face of the record, thereby rendering the IAD's negative inferences unreliable. I agree there were occasional interpretation problems during Mr. Musa's testimony. However, I note from the transcript that in each moment of confusion, the IAD stopped the questioning and ensured the question and answer were properly understood. I also note that Ms. Osman was present throughout Mr. Musa's testimony and that on a number of occasions, she intervened to correct or clarify the interpreter's translations when she thought they did not accurately reflect Mr. Musa's testimony. Ms. Osman has not persuaded me that a breach of procedural fairness occurred in this case.

[16] Ms. Osman also submits that the IAD erred in concluding that Mr. Musa lacked sufficient knowledge of her personal life and relationship history. She argues that in reaching this conclusion, the IAD failed to recognize that this was in large part because of the "arranged" nature of the marriage and because Mr. Musa lacked the frame of reference, living in rural Ethiopia, to understand her life in a highly populated city in Canada. She further argues that the IAD should have recognized that their knowledge of each other would be limited by the fact that they have not been allowed to live together in Canada.

[17] Ms. Osman's argument is without merit.

[18] The IAD found that Mr. Musa knew very little about Ms. Osman. He did not know whom she worked for or what she did for a living, or whether she travelled outside of Canada much. The IAD also noted that, in his interview with the immigration officer, Mr. Musa had stated that Ms. Osman had previously been married and maintained this position at the beginning of the hearing, notwithstanding the fact that Ms. Osman had stated she had never been married.

[19] In addition to not knowing the name of his wife's employer, what she did for a living, whether she had previously been married and whether she had vacationed outside of Canada since their wedding, Mr. Musa did not know much about Ms. Osman's son. Neither the fact that the marriage was arranged, nor the alleged differences in upbringing between Ms. Osman and Mr. Musa, explain why Mr. Musa knew so little about his wife's personal life. Ms. Osman and her husband have been speaking to each other since 2015. The hearing before the IAD was held on August 8, 2019. Given the amount of time they had allegedly been speaking to each other, it was not unreasonable for the IAD to expect that Mr. Musa would know more than he did about his wife's personal life.

[20] Ms. Osman submits that the IAD erred in concluding that Mr. Musa lacked credibility because he failed to declare his previous common law relationship in his permanent residence application form and because he provided misleading evidence regarding his children and their mother. She argues that the IAD ignored her evidence that Mr. Musa should not be faulted for failing to declare his previous relationship in his application form since she had completed it and

misread the question. She is also of the view that the IAD mischaracterized her and Mr. Musa's evidence regarding where Mr. Musa's children lived and how often he saw them. She adds that, contrary to the IAD's conclusion, Mr. Musa never said that he lived "far, far way" from his children, merely that it was "a little bit far".

[21] The IAD's credibility finding was not based solely on the failure to mention his previous common law relationship in his application form or on the specific wording used by Mr. Musa during his testimony to describe the distance between his residence and his children's residence. Rather, the IAD concluded that Mr. Musa lacked credibility because of his evasiveness in describing when his previous relationship actually ended and the obvious discrepancy in how Ms. Osman and Mr. Musa described Mr. Musa's relationship with his children.

[22] Ms. Osman testified that Mr. Musa is an involved parent, who lives near his sons and their mother. She also testified that they live in a small town where everything is "within walking distance", "less than 3 kilometers". In contrast, Mr. Musa testified that he sees his children when he is not working and that he last saw them a month ago. When the IAD asked whether they lived far away from him, Mr. Musa replied: "Yeah they live far away." The IAD then asked Mr. Musa how far. Mr. Musa replied: "They are living far away but I cannot give you the estimate." When asked if he ever walked to see his children, Mr. Musa replied that he "never walk there at all." When asked how long it took to drive there, he replied that "[he did not] know how many hours it takes."

[23] I agree that the IAD misquoted Mr. Musa's testimony concerning the proximity of his children's residence. However, this error is not determinative. Given Mr. Musa's inability to state how many hours it took to go visit his children and Ms. Osman's testimony that the village where her husband and his children lived was less than three (3) kilometres across, it was not unreasonable for the IAD to find that Mr. Musa's testimony was both inconsistent with that of Ms. Osman and misleading. When considered alongside his evasive testimony regarding when his previous relationship ended, the IAD could reasonably find that Mr. Musa lacked credibility.

[24] In addition, Ms. Osman submits that the IAD committed a reviewable error in finding that the absence of any evidence of communication between her and Mr. Musa constituted a negative factor in its assessment. Ms. Osman argues that the IAD ignored her explanation that the lack of evidence was due to Mr. Musa not having a smartphone of his own and using a calling card. She contends that the IAD should have justified why it did not accept her explanation.

[25] This argument is equally without merit.

[26] All the text messages and photographs provided by Ms. Osman were subsequent to the wedding. The IAD also noted Ms. Osman's argument regarding the availability of a smartphone. While not explicitly addressed in its reasons, it is clear that the IAD's concern was the absence of any evidence disclosing communication between Ms. Osman and Mr. Musa prior to their wedding. The onus was on Ms. Osman to provide sufficiently clear, cogent and convincing



evidence to prove that the marriage was genuine and not entered into for immigration purposes. She failed to do so.

[27] Ms. Osman also challenges the IAD's assessment of their compatibility, arguing that the IAD oversimplified their compatibility factors. I disagree. The IAD specifically considered that Ms. Osman and Mr. Musa shared a common cultural heritage. However, the IAD found that it was insufficient to overcome other factors of incompatibility. Aside from the age difference, which the IAD explicitly indicated was not a decisive component, the IAD also considered that Ms. Osman is college educated and works for a multinational financial corporation. She was also raised in a highly populated city in Canada. In contrast, Mr. Musa has the equivalent of a grade three (3) education and works as a tuk-tuk driver in a small village. The IAD also considered that Mr. Musa was unable to describe anything about Ms. Osman's daily life, her interests and how she likes to spend her free time. Relying on these factors, the IAD found that Ms. Osman and Mr. Musa lacked compatibility and that this constituted a negative factor in assessing whether the marriage was genuine.

[28] While Ms. Osman and Mr. Musa may indeed feel that they are compatible with each other, I have not been persuaded that the IAD's conclusion is unreasonable. The IAD explained its finding in a manner that was transparent, intelligible and justified with reference to the evidence. I also find that Ms. Osman's justification for her husband's poor knowledge of her personal life supports the IAD's conclusion regarding their lack of compatibility. She testified that she gave little information to Mr. Musa about her previous relationship, her son and her travels because she did not think he would understand given their different life experiences. It is

exactly those different life experiences that caused the IAD to doubt their compatibility in the first place.

[29] When I consider all of these issues raised by Ms. Osman, I agree with the Respondent that Ms. Osman is essentially asking the Court to reassess and reweigh the evidence to arrive at a different outcome that is favourable to her and her husband. That is not the role of this Court (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Canada (Citizenship and Immigration) v Abdo*, 2007 FCA 64 at para 13).

[30] The last argument raised by Ms. Osman relates to the IAD's failure to address the testimony of Ms. Osman's brother and two friends as well as other evidence such as Facebook pages showing that the relationship was public and proof of Ms. Osman's travel plans to visit Mr. Musa. She argues that even if the IAD was not required to accept all of this evidence, it was at least required to reference it and explain why it did not give it weight.

[31] Upon review of the letters and testimony of the brother and friends, I find that they provide little information about the genuineness of the marriage and the determination of whether the marriage was entered into for immigration purposes. While it would have been preferable to mention this evidence, I do not consider that the IAD committed a reviewable error in failing to do so. The fact that the IAD did not mention each and every document entered into evidence or refer to the testimony of all the witnesses does not mean that the evidence was not considered. The IAD is presumed to have considered all of the evidence presented (*Florea v*

*Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL), [1993] ACF No 598).

III. Conclusion

[32] To conclude, I am satisfied that, when read holistically and contextually, the IAD's decision meets the reasonableness standard set out in *Vavilov*.

[33] Accordingly, the application for judicial review is dismissed.

[34] No questions of general importance were proposed for certification, and I agree that none arise.

**JUDGMENT in IMM-6707-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Sylvie E. Roussel”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6707-19

**STYLE OF CAUSE:** FATHIA ALI OSMAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
TORONTO, ONTARIO AND OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 20, 2020

**JUDGMENT AND REASONS:** ROUSSEL J.

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