Federal Court  Cour fédérale

Date: 20200909

Docket: IMM-5540-19

Citation: 2020 FC 890

Ottawa, Ontario, September 9, 2020

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

MANMINDER SINGH MATTU

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review by the Applicant, the Minister of Citizenship and Immigration, challenging the August 28, 2019 decision of the Immigration Appeal Division of the Immigration and Refuge Board of Canada ("the IAD").

[2] The Minister's argument is that the IAD erred in allegedly disregarding evidence of three of their witnesses, and in finding that the duty of candor was not triggered, requiring the Respondent to disclose a 1998 "sham" marriage ceremony on his permanent resident application.

II. Background

[3] The Respondent is a permanent resident of Canada. This case dates back to 1998, when the Respondent participated in a sham\bogus marriage ceremony in India with Sarabjit Kaur Sandhu ("Ms. Sandhu"), a permanent resident of Canada. The IAD found that there was no completion of the ceremony, with particular religious and legal requirements left unfulfilled. The fake ceremony was in order to gain immigration status but there was never an attempt to apply for entry to Canada under that sham marriage.

[4] After the sham ceremony, the local community said that because the Respondent and Ms. Sandhu were from the same village they could not be married because of a local custom which treats those from the same village as brother and sister. Within one day of the marriage ceremony, the Respondent and individuals from the village took steps to "annul" the sham marriage, including signing an "Agreement Regarding Divorce".

[5] On November 17, 2005, the Respondent married and was sponsored to be a permanent resident by Ms. Gurbax Kaur Mattu ("Ms. Gurbax"). This sponsorship was initially denied by a visa officer, but was allowed after being appealed to the IAD. In the application for permanent residence to Canada, the Respondent was asked, at question 10 of the form, whether he had been previously married or in a common-law relationship. He answered "no".

[6] The Respondent became a permanent resident of Canada on November 16, 2007. The Respondent then separated from Ms. Gurbax on January 2, 2008, and sought a divorce. After the break down of the marriage, it became very acrimonious. Ms. Gurbax claimed that the Respondent took advantage of her to gain immigration status and the Respondent claimed that she pressured him to transfer property into her name and held his passport as well as harassing his family in India to return dowry items.

[7] When Ms. Gurbax was in India she discovered he had been in a marriage ceremony before. She laid a criminal complaint that he had been a bigamist. This was unfounded because at trial she could not prove the marriage was valid.

[8] Ms. Gurbax advised Citizenship and Immigration Canada that the Respondent had deceived her, and she produced a DVD video of the 1998 marriage ceremony which she had obtained while in India in an effort to show he had been previously married. The Canada Border Services Agency ("CBSA") conducted an investigation into the Respondent, and found that he had misrepresented a material fact on his application for permanent residency.

A. *Procedural and Judicial History*

[9] In May of 2014, the Immigration Division found the Respondent not to be inadmissible to Canada within the meaning of section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 ("IRPA"). The Minister appealed, and in January of 2017, during four days of testimony, there were eleven witnesses who gave evidence, and several letters, affidavits and declarations submitted. All of this to say that, including the transcripts, there were hundreds of

pages of evidentiary documents produced out of this hearing. The IAD granted the Minister's appeal and found the Respondent inadmissible.

[10] The Respondent applied to the Federal Court for judicial review, which was granted by Justice Manson on August 24, 2017 (*Manminder Singh Mattu v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 781) on the grounds that the tribunal ignored eyewitness evidence.

[11] The matter was sent back for redetermination with the IAD where it found on August 28, 2019, after two days of testimony, that the Respondent was not inadmissible to Canada. The Minister has applied to this Court for judicial review.

B. *Decision under Review*

[12] The IAD found that the Respondent did not engage in misrepresentation within the meaning of section 40(1)(a) of the IRPA. The decision considered both whether there was a legal marriage between the Respondent and Ms. Sandhu in 1998, and, if not, whether there was a duty of candour to disclose the sham marriage in the application for permanent residency. The IAD answered both questions in the negative. There was no need for the IAD to consider the further question of humanitarian and compassionate factors.

III. Issues

[13] The issues are:

A. Was the IAD's decision that the 1998 marriage was invalid unreasonable due to it disregarding evidence presented?

B. Was the IAD's decision that the duty of candour did not require the Respondent to declare his part in the 1998 marriage ceremony unreasonable?

IV. Standard of Review

[14] The standard of review on all issues is one of reasonableness.

V. The law

[15] The relevant provisions are attached as Annex A.

VI. Analysis

A. *Was the IAD's decision that the 1998 marriage was invalid unreasonable due to it disregarding evidence presented?*

[16] The Applicant submits that the IAD erred by dismissing the witnesses; Mr. Hothi's in-person evidence for lack of credibility and erred when it disregarded the evidence of Mr. Cheema and Ms. Kaur.

[17] Significant deference is owed to the credibility determinations of a tribunal (*Ji v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1219 at para 7), however, the reasons for those findings must be given in "clear and unmistakeable terms" (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228).

[18] The IAD had a large volume of evidence before them. The first hearing was 4 days and had numerous witness including experts and affidavit evidence before it. At the second hearing, which lasted 2 days, there were further witnesses and evidence in addition to the previous evidence from the first hearing. I can think of no one in a better position to make determinations of weight and credibility than the IAD on these facts.

(1) Sompal Singh Hothi

[19] The Applicant argues that the reasons given for assigning Mr. Hothi's evidence little weight are inadequate as the IAD failed to say in clear language why. The reasons at issue are: that he was confused about who the Respondent married in 1998; and that he had videoed dozens of weddings after the Respondent's 1998 ceremony.

[20] The Applicant argues these are unsupportable reasons because Mr. Hothi corrected his earlier confusion regarding the identity of the person in the 1998 ceremony, and that he was under affirmation when he made the correct identification, but not when he was mistaken. Further, the Applicant stated that there is no relationship between being hired to film subsequent weddings and the impugnation of Mr. Hothi's credibility. The Applicant says that because the IAD did not explain why filming dozens of weddings makes him not credible, a reviewable error

was made. Especially given that he testified that he had reason to remember the 1998 wedding because his brother-in-law was a close friend to the Respondent, and that the couple would have been “beaten up”. The Applicant submitted that without the IAD giving clear and unmistakeable reasons for the rejection of the evidence, there is a lack of transparency and justification.

[21] When the transcript of the cross-examination is reviewed, it is evident that Mr. Hothi had no recollection of the 1998 ceremony because he could not correctly identify who the bride was at the wedding, and continually confused the 1998 ceremony between the Respondent and Ms. Sandhu with the 2005 wedding of the Respondent to Ms. Gurbax. When he was questioned about this discrepancy, Mr. Hothi denied making his prior inconsistent statements, in contradiction with the evidence of a CBSA officer.

[22] The IAD found Mr. Hothi to be unhelpful due to confusion and prior inconsistent statements. While the Applicant may not agree with the conclusion, there was a reasonable decision made, and an explanation as to why it came to that decision. Certainly giving less weight to a witness who provides contradictory evidence is within the realm of possible outcomes. The IAD discharged its requirement when it explained that they based their decision on the fact that he was confused about who was being married in the wedding ceremony, and reasonably found that his testimony was insufficient to establish there was a valid ceremony.

(2) Gurnam Cheema

[23] The Applicant argues that the IAD erred by disregarding the evidence of Mr. Cheema, the wedding singer. The IAD found that Mr. Cheema was not in attendance at the ceremony, but

only at the reception so his evidence regarding the ceremony was disregarded. The Applicant, in contrast with the IAD, submits that there is no credible evidence to suggest that Mr. Cheema was not at the ceremony. The Applicant submitted that the evidence of a Sikh priest was not sufficient, and that the IAD did not expressly state that it preferred the evidence of the priest over that of Mr. Cheema's. Further, the Applicant argues that the priest could not provide any evidence that the singer was not at the ceremony so the priest's evidence should have been inconclusive. The Applicant submits that the IAD did not give adequate reasons and when one reads the decision, one just does not know why his evidence was disregarded.

[24] Mr. Cheema's evidence was found to be of little value because according to evidence from other sources, it seemed unlikely that he was at the ceremony to attest to the completeness of it.

[25] The IAD found that there was general agreement between the Sikh priests who testified as experts regarding the requirements of a Sikh marriage ceremony and the Code of Conduct. Although there was some question as to what occurred on the video, the IAD found that the ceremony performed for the Respondent and Ms. Sandhu was not a complete ceremony and therefore the marriage was not complete.

[26] The priest's evidence was that there is generally one type of singer at the religious wedding ceremony and then a different style of singer at the reception. The singers at the religious ceremony wear turbans, have beards and sing hymns at the ceremony. Whereas the singers at the reception do not where turbans or have beards, wear shiny clothes and sing to

entertain at the party. The evidence of the priest is that the singer was not wearing a turban and was clean-shaven so Mr. Cheema was a singer at the reception, not at the ceremony.

[27] While the reasons may not be as explicit as they could have been, they allow the parties to understand that the evidence given by both priests of the two different kinds of singers and of how a ceremony must be performed was the reason they did not give the evidence of Mr. Cheema a good deal of weight. Mr. Cheema's evidence was found to be of little value because according to evidence from other sources it seemed unlikely that he was at the ceremony to attest to the completeness of it. This determination, again, is within the power of the IAD. It is clear from the reasons why the IAD gave his evidence little value. I find that the evidence on the file from the expert priest regarding the role that Mr. Cheema played is conclusive that he sang at the reception only. It is reasonable for the IAD to determine he was not at the wedding and to prefer the evidence of the priests tendered as experts.

(3) Gyan Kaur

[28] The Applicant argues that the IAD erred by disregarding the evidence of the Respondent's aunt, Ms. Kaur. Her evidence was that she attended the wedding and that the marriage was complete. The Applicant indicates that it is unreasonable for the IAD to ignore an actual eyewitness. They acknowledge that she was not able to confirm her date of birth but also say that it is understandable as she was only asked one time. Similarly, she could not identify the village where she lives, but the Applicant indicates that is not completely true because the transcript says "indistinguishable". The Applicant further argues that there were reasonable possibilities for why she was not able to remember those facts, and that her evidence regarding

the 1998 ceremony ought not to have been disregarded. The Applicant indicated that her testimony was forthright and should have been given more weight and that the IAD did not engage in explaining why and thus the reasons are inadequate.

[29] Ms. Kaur was not called as a witness at the hearing. I find that the IAD was entitled to reject the previous testimony of Ms. Kaur on the grounds that she was confused and was unreliable diminishing the value of her testimony. Her evidence was insufficient when considered with the other evidence regarding the wedding ceremony. Further, the IAD was not required to accept the assertion of the Applicant that there could be other factors explaining why she did not remember when she was born or what village she lived in. This goes to reliability, and it was within the IAD's authority to reject her evidence.

[30] The Applicant is asking the Court to re-weight her evidence on the speculation that there are other plausible reasons why she was not able to recall these basic details. The Court will not engage in reweighing the evidence. As well, I find that the reasons are adequate and it is understandable why they rejected her evidence and chose to rely on other evidence.

[31] A judicial review is not a line-by-line treasure hunt for errors but rather the decision should be approached as an organic whole (*Irving Pulp & Paper v CEP, Local 30*, 2013 SCC 34 at para 54.) A reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15 ("*Newfoundland*")). At paragraph 14 of the *Newfoundland* decision, the SCC says: "I do not see Dunsmuir as standing

for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision…It is a more organic exercise – the reasons must be read together with the outcome and serve the purpose of showing whether the results fall within a range of possible outcomes" (at para 14).

[32] The recent Supreme Court of Canada decision of *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65, has not changed this, and in fact bolsters it slightly:

> [94] The reviewing court must also read the decision maker's reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker's work, and past decisions of the relevant administrative body. **This may explain an aspect of the decision maker's reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency.** Opposing parties may have made concessions that had obviated the need for the decision maker to adjudicate on a particular issue; the decision maker may have followed a well-established line of administrative case law that no party had challenged during the proceedings; or an individual decision maker may have adopted an interpretation set out in a public interpretive policy of the administrative body of which he or she is a member.
>
> (Emphasis added)

[33] When reviewing the record as a whole, as instructed to do by the Supreme Court of Canada, one can see that there was other evidence presented which pointed to the fact that there was no legal wedding between the Respondent and Ms. Sandhu. This evidence assisted the IAD in making their decision.

[34] For example, along with evidence discussed earlier there was an eye-witness at the wedding, Piari, who gave evidence as to why the wedding was not real. There was also evidence as to why the Respondent's grandfather, Darshan Singh, and the village counsel felt it necessary to have the Agreement Regarding Divorce. That evidence as well as other evidence was consistent in the explanation that the agreement was felt to be necessary so that others in the village would know that that there was not a complete wedding ceremony in 1998:

> I understand from my conversation with Piari, that when Manminder and Sarabjit returned to the village, there was a big commotion in the village. The entire village was very angry, although it was a fake marriage. But they had to remove the perception in the minds of the people that there has -- even if there was a perception of marriage which was created in their mind, they had to dispel the count, satisfy the count and to save the lives of Manminder and Sarabjit, they had to make this agreement, in public, so that nobody questions and nobody -- no harm is put on them. The other reason for doing so was to also add this as a deterrent. Although it was not a valid marriage, but to have this as a detenent. So that no two boy and girl from the same village get married again.
>
> (page 176 condensed book)

[35] Additionally there was documentary evidence regarding an Indian court case against the Respondent for bigamy where Gurbax Kaur Mattu was the complainant. In a decision dated December 21, 2018, the Indian court found there was insufficient evidence to establish that a marriage existed between the Respondent and Sarabjit. An expert witness, Sumeet Lall—a lawyer in India—opined that there was not ever a marriage according to Indian law.

[36] The reasons provided by the IAD in this matter adequately explain why it gave little weight to the evidence of the three witnesses mentioned above, fulfilling the requirements of *Vavilov* that a decision be based on internally coherent reasoning. While the Applicant may not

agree with the conclusions, the IAD provided "[a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, citing *Law Society of New Brunswick v Ryan*, 2003 SCC 20).

[37] The previous hearings were multiple days and produced a significant amount of evidence, all of which the tribunal had access to in order to make this decision. The IAD is in best position to make determinations of credibility and weight of evidence after having reviewed the large and detailed record as well as the witnesses before them. It is not for me to reweigh the evidence. I also find the reasons are sufficient to connect the dots. The IAD found that the Applicant did not establish on a balance of probabilities that there was a legal first marriage to Sandhu, and I find no reason to disturb this determination.

B. *Was the IAD's decision that the duty of candour did not require the Respondent to declare his part in the 1998 marriage ceremony unreasonable?*

[38] The Applicant argues that the IAD erred by finding that the duty of candour did not require the Respondent to disclose an invalid marriage. It made this finding because the visa officer did not ask any questions that would put him on notice that his previous sham marriage was an issue of concern and that the visa officer did not ask detailed questions about previous relationships.

[39] The Applicant says that the scheme of the IRPA and *Immigration and Refugee Protection Regulations* SOR/2002-227 ("IRPR") read as a whole requires disclosure of all marriages regardless of whether they are legally valid, not legally valid, or annulled. They cite subsection

4(1) of the IRPR which deals with marriages of convenience and paragraph 4.1 of the IRPR which deals with divorces of convenience. The Applicant further argues that the question on the application ("have you previously been married or in a common-law relationship") does not qualify which types of marriages must be disclosed, and that the manner in which the marriage ended does not exclude some from being disclosed.

[40] The Applicant indicates the visa officer was precluded from follow up questions she would have asked had he answered that he had a previous sham marriage.

[41] The Applicant relies on *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 ("*Baro*") as a leading case on the duty of candour requiring a permanent resident applicant to disclose any material facts, including their marital history. The Applicant argues that the duty is informed by reading sections 40 and 16 of the IRPA together (*Haque v Canada (Minister of Citizenship and Immigration)*, 2011 FC 315). They point out that silence can be a misrepresentation (*Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848) ("*Bodine*"). As well that a misrepresentation does not have to induce an error in the administration of the IRPA, but that it is enough that it could induce an error (*Chhetry v Canada (Minister of Citizenship and Immigration)*, 2016 FC 513).

[42] The Applicant also argues that the Respondent's personal circumstances should have alerted him of his duty to disclose and that the Respondent's state of mind is important when considering this matter. Further, the Applicant says that given that the Respondent would have only had a layperson's understanding of the law, and yet he signed an Agreement Regarding

Divorce shows that the signatories were concerned about the legal implications of the ceremony. It follows what the Respondent said, that it was likely that when he filled out his permanent resident application he was still under the belief that the marriage was legally valid between the time he participated in the marriage and the time he signed the divorce document.

[43] The IAD accepted that there was no valid marriage in 1998 based on the evidence provided. This, combined with the specific questions asked of the Respondent by the visa officer led the IAD to further conclude that there was no reason for the Respondent to volunteer evidence about the sham ceremony.

[44] Even if there is a duty to disclose an annulled or void marriage, as some case law suggests, there is a distinction between that and an incomplete ceremony as is found by the IAD in its decision. There were no questions asked about previous marriages, and, citing the IAD decision, no evidence that the visa officer asked any questions that would have put him on notice that his previous sham marriage was an issue of concern. The duty of candour, according to the Applicant, can be triggered when the person is put on notice that the information is required, and that the context of the case is crucial.

[45] There is evidence in the record that he honestly and reasonably believed that he was not withholding information because he had no reason to believe that he was required to disclose the existence of an invalid marriage ceremony.

[46] The Federal Court of Appeal decision of *Singh Sidhu v Canada* 2019 FCA 169 ("*Sidhu*") states that:

a) the duty of candour is an overriding principle of the act (*Sidhu* at para 70);
b) that there must be reasons given by the tribunal as to why the duty of candour did not engage in the particular case; and
c) that the reasons why the Appellant in that case did not consider the undisclosed information relevant were required (*Sidhu* at paras 71-77).

[47] In the present case, the IAD addressed these issues. In the reasons, the IAD stated that there was no valid marriage, that the visa officer did not ask any questions about previous relationships, and that the Respondent believed his 2005 marriage to legally be his first.

[48] The present case can also be distinguished from *Bodine*, where there was an overt act which was intended to deceive CBSA officers (moving her belongs to her boyfriends car before a second attempt at crossing the border), and from *Baro* where the Applicant in that case admitted to a legal marriage but lost contact with her. The Respondent in this case did not believe himself legally married to Ms. Sandhu, and therefore did not think he fit into any category defined in the IRPA or the IRPR.

[49] It was open to the IRCC to ask about previous relationships, sham marriages, or attempts to contravene Canadian immigration rules on the application for permanent residence or at an interview. They chose not to ask these questions.

[50] The regulations define marriage as being “valid both under the laws of the jurisdiction where it took place and under Canadian law” (IRPR s 2). The Respondent submitted evidence, which showed that even if there was a completed ceremony, the marriage would not be valid under Indian law.

[51] Further, the regulations explicitly state that “a foreign national shall not be considered a spouse…if the marriage…was entered into primarily for the purpose of acquiring any status or privilege under the act; or…is not genuine” (IRPR s 4(1)). The Respondent admitted that he only underwent the 1998 ceremony for nefarious purposes but never followed through with those purposes. Under the legislation, it would see that there is little possibility that the Respondent’s marriage was valid in an immigration context. If there was no valid marriage, then there could be no duty to disclose it, unless asked specifically about any sham marriages.

VII. Conclusion

[52] I find the decision of the IAD reasonable. I dismiss the application for judicial review.

[53] No certified questions were posed and none arose.

JUDGMENT in IMM-5540-19

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

ANNEX

Immigration and Refugee Protection Act, SC 2001 c 27

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;	b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;
(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or	c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;
(d) on ceasing to be a citizen under	d) la perte de la citoyenneté :
(i) paragraph 10(1)(a) of the Citizenship Act, as it read immediately before the coming into force of section 8 of the Strengthening Canadian Citizenship Act, in the circumstances set out in subsection 10(2) of the Citizenship Act, as it read immediately before that coming into force,	(i) soit au titre de l'alinéa 10(1)a) de la Loi sur la citoyenneté, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la Loi renforçant la citoyenneté canadienne, dans le cas visé au paragraphe 10(2) de la Loi sur la citoyenneté, dans sa version antérieure à cette entrée en vigueur,
(ii) subsection 10(1) of the Citizenship Act, in the circumstances set out in section 10.2 of that Act, or	(ii) soit au titre du paragraphe 10(1) de la Loi sur la citoyenneté, dans le cas visé à l'article 10.2 de cette loi,
(iii) subsection 10.1(3) of the Citizenship Act, in the circumstances set out in section 10.2 of that Act.	(iii) soit au titre du paragraphe 10.1(3) de la Loi sur la citoyenneté, dans le cas visé à l'article 10.2 de cette loi.

Immigration and Refugee Protection Regulations, SOR/2002-227

Interpretation	**Définitions**
2 The definitions in this section apply in these	2 Les définitions qui suivent s'appliquent au

Regulations.

…

marriage, in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law. (mariage)

Family Relationships

Bad faith

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

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

présent règlement.

…

mariage S'agissant d'un mariage contracté à l'extérieur du Canada, mariage valide à la fois en vertu des lois du lieu où il a été contracté et des lois canadiennes. (marriage)

Notion de famille

Mauvaise foi

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) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

b) n'est pas authentique.

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v MANMINDER SINGH MATTU

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