Federal Court Cour fédérale

Date: 20210409

Docket: IMM-7407-19

Citation: 2021 FC 303

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 9, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

JULIE TREMBLAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Julie Tremblay is seeking judicial review of the decision of the Immigration and Refugee Board of Canada's Immigration Appeal Division [Appeal Division], dated November 18, 2019, dismissing her appeal of the decision made on June 11, 2018, by the Immigration Section of the Canadian Embassy in Mexico.

[2] For the reasons below, the application for judicial review will be dismissed.

II. Background

[3] Ms. Tremblay is a citizen and resident of Canada, and Mr. Bonilla is a citizen and resident of the Dominican Republic.

[4] In August 2016, Ms. Tremblay travelled to the Dominican Republic and met Mr. Bonilla through a friend. They quickly developed a relationship, and over the following year Ms. Tremblay travelled to the Dominican Republic several times.

[5] On August 20, 2017, Ms. Tremblay and Mr. Bonilla got married in the Dominican Republic, and on August 25, 2017, Ms. Tremblay and Mr. Bonilla signed the sponsorship application form and the Canadian permanent residence application form, respectively.

[6] On June 7, 2018, Mr. Bonilla met with a visa officer for an interview. The visa officer informed Mr. Bonilla of the concerns raised by the application, which warranted an interview. The concerns included his vague description of the development of his relationship with Ms. Tremblay; his 17-year age difference with Ms. Tremblay, who is the older of the two; the fact that Ms. Tremblay's family did not attend the wedding; the language barrier to the spouses' communication; and the fact that Ms. Tremblay transferred significant amounts of money to Mr. Bonilla during the relationship.

[7] The visa officer indicated that he was concerned, among other things, by the fact that Mr. Bonilla provided only general answers. Mr. Bonilla did not know Ms. Tremblay's date of birth; stated that they had never argued; could not say what they have in common; and remained vague about the details of the marriage proposal, except to say that it was Ms. Tremblay who had proposed.

[8] In the end, the visa officer determined that Mr. Bonilla did not meet the criteria for immigration to Canada. The embassy's Immigration Section refused Mr. Bonilla's application for a permanent resident visa, relying on statutory and regulatory provisions including subsection 12(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Immigration Act] and subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002–227 [the Immigration Regulations]. Ultimately, it indicated that it was not satisfied that Mr. Bonilla and Ms. Tremblay's marriage was genuine or that it was not entered into primarily for the purpose of acquiring permanent resident status in Canada.

[9] Ms. Tremblay appealed against that decision to the Appeal Division under subsection 63(1) of the Immigration Act.

III. The Appeal Division's decision

[10] On October 22, 2019, the Appeal Division held a hearing for the appeal. Ms. Tremblay, Mr. Bonilla and Yannick Batalaire testified.

[11] On November 18, 2019, the Appeal Division dismissed Ms. Tremblay's appeal.

[12] In its analysis, the Appeal Division summarized the facts and provided a non-exhaustive list of relevant factors, found in the case law, used to assess the genuineness of a relationship between spouses.

[13] The Appeal Division noted that it also had to determine whether the marriage was entered into primarily for the purpose of acquiring a status or privilege under the Immigration Act. It stated that this is usually assessed by looking into the rear-view mirror, that is, focusing on when the appellant and the applicant got married and the phases leading up to that.

[14] The Appeal Division concluded that it had not been shown, on a balance of probabilities, that the marriage was not entered into primarily for the purpose of acquiring a status or privilege under the Immigration Act. It noted three factors: (1) initial contact and development of the relationship; (2) aspects relating to the compatibility of the spouses; and (3) resources unilaterally invested by the appellant, Ms. Tremblay. The Appeal Division did not assess whether the marriage was genuine.

[15] Regarding the initial contact and development of the relationship, the Appeal Division began assessing the factual background from the meeting on August 21, 2016. It noted the following: (1) the fact that, from the very first days of their relationship and throughout the first few weeks, Ms. Tremblay and Mr. Bonilla sent each other passionate messages of eternal love, comparing their relationship to that of Romeo and Juliet, and Mr. Bonilla was already calling the applicant his wife; (2) inaccuracies and contradictions regarding the timing and the circumstances of the marriage proposal; (3) inaccuracies and contradictions regarding

Mr. Bonilla's coming to Canada; (4) inaccuracies and contradictions related to regaining control of Mr. Bonilla's Facebook account, closed by another woman in April 2017; and (5) the fact that Ms. Tremblay's only relatives who came to the wedding were those who lived in the Dominican Republic. Ultimately, the Appeal Division found that the relationship developed very quickly and noted that such speed, in the context of this case, casts doubt on Mr. Bonilla's true intentions.

[16] Regarding aspects related to the compatibility of the spouses, the Appeal Division reviewed each spouse's previous relationships, the 17-year age difference with Ms. Tremblay being the older of the two, the spouses' respective levels of education, their lifestyles, their knowledge of the other's language and what they believe they have in common. In conclusion, the Appeal Division noted that it was not so much the difference in age and lifestyle between the spouses that was problematic in this case, but how little they were able to explain to the Appeal Division about any discussions and reflection on these matters.

[17] Finally, the Appeal Division reviewed the resources unilaterally invested by Ms. Tremblay. The Appeal Division noted a disparity between the resources invested by Ms. Tremblay and those invested by Mr. Bonilla, which, combined with the speed with which the relationship evolved and the lack of explanations by Mr. Bonilla as to his compatibility with Ms. Tremblay, was not compelling in the Appeal Division's opinion.

[18] The Appeal Division concluded that Ms. Tremblay did not discharge her burden of proving on a balance of probabilities that the primary purpose of the marriage was not to enable her spouse to acquire permanent resident status in Canada.

IV. Preliminary issue: Ms. Tremblay's supplemental affidavit

[19] On February 5, 2021, Ms. Tremblay filed a supplemental affidavit [TRANSLATION] "with a view to inform the Court of the facts related to our marital situation since the IAD's refusal decision". The allegations in that affidavit concern the events that transpired after the decision. The respondent, the Minister of Citizenship and Immigration [the Minister], objects to the admissibility of the contents of the affidavit.

[20] As Justice Gascon stated at paragraph 19 of *Shahzad v Canada (MCI)* 2017 FC 999, "The case law has clearly established that a judicial review application strictly relates to the decision under review and that 'the record before the reviewing court must be that which was before the decision-maker' (*Bernard v Canada (Revenue Agency*), 2015 FCA 263 at paras 13-28; *Sedighi v Canada (Citizenship and Immigration)*, 2013 FC 445 at para 14; *Mahouri v Canada (Citizenship and Immigration)*, 2013 FC 244 at para 14). The general rule is that a reviewing court should not receive, from a decision-maker, new evidence going beyond the tribunal record and the decision itself *(Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [AUCC] at para 20; *Qin v Canada (Citizenship and Immigration)*, 2013 FC 147 at para 18). This rule is based on the principle of finality of tribunal decisions: a tribunal cannot use judicial review as an opportunity to 'amend, vary, qualify or supplement' its reasons *(Canada (Attorney General) v Quadrini*, 2010 FCA 246 at para 31)."

[21] There are exceptions of course, but the applicant has not raised any, and none applies in this case.

[22] Thus, since the allegations and facts presented in Ms. Tremblay's supplemental affidavit were not before the Appeal Division, the Court will not consider them. Nor will the Court consider the arguments stemming from them.

V. The parties' positions before the Court

[23] At the hearing, the applicant somewhat changed the facts and arguments found in her memorandum. Thus, the applicant confirmed to the Court that the Appeal Division did not analyze the genuineness of the marriage (paragraph 4(1)(b) of the Immigration Regulations) in its decision and that she was therefore abandoning the arguments related to that factor.

[24] Ms. Tremblay submits that the Appeal Division's decision must be reviewed on the reasonableness standard and argues that it is unreasonable. She submits that that Appeal Division made a variety of significant errors that warrant the Court's intervention.

[25] Ms. Tremblay cites section 4 of the Immigration Regulations and emphasizes that it appears under the heading "Bad faith". She adds that, for there to have been bad faith, the marriage would have to have been planned primarily for the purpose of acquiring a status in Canada. The standard of subsection 4(1) therefore does not apply when the spouse seeks to acquire a status in Canada, but it is not his primary purpose.

[26] Ms. Tremblay submits that the Appeal Division's conclusion that Mr. Bonilla was primarily seeking to acquire permanent resident status in Canada is unreasonable because the decision-making process that supports it is unintelligible and unjustified in respect of the facts and law.

[27] She submits that the Appeal Division did not take into account all of the relevant evidence in the record and that it drew unreasonable conclusions with regard to the general factual background because, among other things, (1) the Appeal Division erred like in *Ferraro v Canada (Minister of Citizenship and Immigration)* 2018 FC 22; (2) the screenshots presented by the Appeal Division were insufficient, inaccurate and incomplete since the messages dated August 23, 2016, do not contain declarations of love; it was rather those dated August 25, 2016; (3) all of the evidence of communication clearly showed the high degree of attachment and genuineness of their relationship; (4) the spouses' versions regarding the marriage overlapped since Mr. Bonilla's proposal on December 31 could not reasonably be described as "formal" and Mr. Bonilla's statement before the Appeal Division was a *de novo* review; (5) the Appeal Division ignored the converging elements of the testimony regarding the Facebook account closure; (6) the conclusion that the marriage was hasty because of the absence of loved ones was unreasonable; (7) the evidence showed compatibility elements that were ignored by the Appeal Division; and (8) the unilateral investment conclusion was unreasonable because Mr. Bonilla contributed as much as his means allowed.

[28] The Minister responds that the standard of review is that of reasonableness (among others, *Canada (MCI) v Vavilov* 2019 SCC 65, paras 13, 24, 30 [*Vavilov*]; *Kaur v Canada (MCI)*

2010 FC 417, para 14). The Minister reiterates the applicable statutory provisions and essentially responds that the Appeal Division committed no errors, that the conclusions are justified by the evidence on the record and that the decision is reasonable.

VI. Decision

A. *Standard of review*

[29] The Court agrees with the parties that the applicable standard is that of reasonableness. In accordance with *Vavilov*, the reasonableness standard of review is presumed to apply, and nothing rebuts that presumption in this case.

[30] When the applicable standard is reasonableness, the Court's role in judicial review is to examine the reasons given by the administrative decision-maker and to determine whether the decision "is based on an internally coherent and rational chain of analysis" and "is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corp v Canadian Union of Postal Workers* 2019 SCC 67 at paras 2, 31 [*Canada Post Corp*]). The Court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15).

[31] In judicial review, the Court should refrain from reweighing and reassessing the evidence considered by the decision-maker and from interfering in the decision-maker's findings of fact in order to substitute its own (*Canada Post Corp* at para 61; *Canada (Canadian Human Rights*

Commission) v Canada (Attorney General), 2018 SCC 31 at para 55 [*CHRC*]). Rather, it must consider the reasons as a whole, in the context of the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47), and limit itself to determining whether the conclusions are irrational or arbitrary.

B. *The Appeal Division's decision is reasonable*

[32] Subsection 12(1) of the Immigration Act provides that a foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

[33] Section 4 of the Immigration Regulations provides under the heading "Bad faith" that "[f]or 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."

[34] In *Canada (Citizenship and Immigration) v Moise*, 2017 FC 1004, Justice Yvan Roy, describes the burden that is on the applicant:

> [15] The burden on the respondent is to demonstrate, on a balance of probabilities, that her marriage is genuine and that it was not entered into primarily for the purpose of acquiring a status. Indeed, a marriage is disqualified if either of the conditions set out in paragraphs 4(1)(a) and (b) is not met (*Mahabir v Canada (Citizenship and Immigration)*, 2015 FC 546 and *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077). In other words, the

> respondent must meet both conditions. A marriage entered into for the purpose of acquiring a status or privilege will be flawed even if it subsequently becomes genuine. As well, a marriage that is validly entered into can become flawed for immigration purposes if it loses its genuineness.
>
> [16] On its face, the provision sets forth two different times when evaluations must be conducted. Regarding the genuineness of the marriage, the Regulations use the present tense, meaning that the genuineness of the marriage is evaluated at the time of the decision. On the other hand, the evaluation of the intent with which the marriage was entered into, i.e. primarily to acquire a status or a privilege, is in the past. The English reads “was entered” while the French reads “visait”; the evaluation is therefore conducted at the time of the marriage.

[35] The Court notes that Ms. Tremblay’s arguments essentially suggest that the Court adopt different interpretations of some of the evidence that was before the Appeal Division in order to make different findings of fact. The Court also notes that the applicant has expressed her disagreement regarding the assessment of the evidence. However, as stated above, when the Court is applying the reasonableness standard, its role is not to reassess the relative weight given by the decision-maker to any relevant factor or piece of evidence, but to assess whether the conclusions are irrational or arbitrary.

[36] The inconsistencies and contradictions noted by the Appeal Division are supported by the evidence on the record. Thus, the evidence on the record reveals the following, among other things: (1) Ms. Tremblay’s and Mr. Bonilla’s versions regarding the marriage proposal are different, and Mr. Bonilla himself also provided different versions to the visa officer and to the Appeal Division; it is reasonable for the Appeal Division not to accept his terse explanations; (2) even if I accept that the Appeal Division erred in describing the communications dated August 23, 2016, as declarations of love, Ms. Tremblay acknowledged that such declarations of

love were exchanged two days later, which was still only a few days after the spouses had met; (3) Mr. Bonilla did signal his intention to travel to Canada in February 2017, regardless of how his message can be described; and (4) the spouses provided different versions regarding the restoration of Mr. Bonilla's Facebook account, which had been closed by another woman.

[37] Ms. Tremblay did not satisfy the Court that the Appeal Division ignored some of the evidence. "[A]n officer is presumed to have weighed and considered all the evidence unless the contrary is shown (*Sing v Canada (Minister of Citizenship and Immigration*), 2005 FCA 125 at para 90; *Florea v Canada (Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). It is only when a tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene (*Ozdemir v Canada (Minister of Citizenship and Immigration*), 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 (QL) at para 16)." (*Shahzad*). The arguments raised by Ms. Tremblay do not rebut the presumption.

[38] Finally, Ms. Tremblay did not satisfy the Court that the concerns raised by the Appeal Division regarding the lack of in-depth reflection on certain important aspects related to the spouses' compatibility, the unilateral investment of resources and the hastiness of the marriage are not legitimate or reasonable given the circumstances.

VII. Conclusion

[39] The Appeal Division's decision is justified, intelligible and transparent. The inconsistencies and contradictions raised in it are found on the record and are sufficient to justify

the Appeal Division's conclusion. The applicant did not satisfy the Court that the Appeal Division's decision was unreasonable.

JUDGMENT in IMM-7407-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Martine St-Louis"

Judge

Certified true translation
Vincent Mar, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7407-19
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