

Federal Court



Cour fédérale

Date: 20210520

Docket: IMM-7840-19

Citation: 2021 FC 469

Ottawa, Ontario, May 20, 2021

PRESENT: Madam Justice Simpson

BETWEEN:

BEATRICE AMA AHIAWU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS
(Delivered orally from the Bench by videoconference
at Ottawa, Ontario on May 4, 2021)

[1] This application is for judicial review of a decision of the Immigration Appeal Division [the IAD] of the Immigration and Refugee Board dated November 12, 2019, in which it dismissed the Applicant's appeal from the refusal of her spousal sponsorship application.

[2] The Applicant is a 33-year-old Canadian citizen. She was born in Ghana and moved to Canada with her mother at age six. She returned to Ghana for school between 2001 and 2008. She has no children. She works as a dental assistant.

[3] Wisdom Mawuko [Wisdom], whom the Applicant is sponsoring as her spouse, is a 35-year-old citizen of Ghana. He is employed in Accra as a pastor. This is his first marriage, although he was previously in a long-term relationship with a woman named Princess Majid. With her, he fathered four children.

[4] The Applicant and Wisdom met in Ghana in 2005, and they became friends. After the Applicant returned to Canada in 2008, she and Wisdom lost contact.

[5] When he befriended the Applicant, Wisdom was in a relationship with Princess Majid which began in 2005. The couple had their first child in 2006. The evidence is inconsistent about when Wisdom and Majid lived together or exactly when their relationship ended. Their fourth child was born in 2012.

[6] The Applicant and Wisdom reconnected in 2013. They exchanged contact information and began communicating regularly through multiple social media platforms and by phone. It is unclear when their rekindled friendship became romantic. Wisdom says this happened immediately. The Applicant says it was sometime in 2014.

[7] Wisdom invited the Applicant to visit him in Ghana in 2014. They had not seen each other since she left Ghana in 2008. When she arrived, he proposed and she accepted. They were married on January 20, 2015, and following the wedding, they went on a honeymoon in Ghana. Shortly thereafter, the Applicant returned to Canada.

[8] The Applicant visited Ghana on multiple occasions in the following years for approximately a month at a time. She also sent significant amounts of money to Wisdom. The couple bought two plots of land together in Ghana in 2017 with the intention of developing them and having a property to live on when visiting the country. Wisdom has never visited Canada.

[9] The couple planned what the Applicant described as an anniversary honeymoon in Cuba in 2016. Wisdom obtained a Cuban visa; however, he never arrived in Cuba. The Applicant did travel to Cuba and spent some time trying to reach Wisdom to determine when he would arrive. For several days, he did not respond to her queries.

[10] The IAD's decision revealed that Wisdom's evidence was problematic in the following respects:

1. Wisdom wrote on his application for permanent residence that he had never been in a common-law relationship, yet he lived with Princess Majid and fathered four children.
2. Wisdom stated at one point that he and Princess Majid began to live together in 2005, but later gave 2011 as the date they began to cohabit.
3. Wisdom said his relationship with Princess Majid was over, but nevertheless she used his surname as part of her name in her testimony before the RPD.

4. Wisdom said that he had been planning to go to Cuba for work and made no mention of meeting the Applicant there. In contrast, she said that the trip was to be their second honeymoon.
5. Wisdom obtained a letter from his former landlord to use as evidence before the IAD but said that he had never read it.
6. Wisdom said that he was unaware of the reason why it took the Applicant over two years to apply to sponsor him.

[11] The IAD's conclusion was that, because the Applicant and Wisdom were not credible, the Member was not satisfied that their relationship was a genuine marriage or that it was not entered into primarily for immigration purposes.

[12] In reaching this conclusion, the IAD noted that Minister's counsel had acknowledged that there was significant documentation in support of the relationship's *bona fides* [the Acknowledgement]. The documentation included letters of support, chat and phone histories, information about their purchase of property in Ghana, information about the Applicant's fertility treatments, and information about money and gifts sent by the Applicant to Wisdom [collectively the Documentation].

[13] The issue is whether, as a matter of procedural fairness, the IAD was required to consider the Documentation.

[14] The Applicant says that, notwithstanding the negative credibility findings, the IAD was required to address and weigh the Documentation against the negative credibility findings to meet the test of reasonableness set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. It says that reasonable decisions must be justified.

[15] The Respondent, on the other hand, says that the IAD is presumed to have considered the Documentation, especially since its existence was mentioned in the reasons. There was no need to weigh the Documentation or make findings about its significance in view of the negative credibility findings.

I. **Conclusion**

[16] Given the Acknowledgement by Minister's counsel, it is my view that the IAD was obliged to consider the Documentation and make findings.

[17] The IAD's decision could have been justified in a variety of ways, including a finding that the documents supported a relationship, but one that was not a marriage, or a finding that the credibility issues were so fundamental that they outweighed the Documentation. The IAD might also have found that there was a genuine marriage. However, in my view, the IAD was obliged to consider the Documentation in the circumstances of this case.

[18] No question was posed for certification for appeal.

JUDGMENT IN IMM-7840-19

THIS COURT'S JUDGMENT is that the Application for Judicial Review is allowed.

The matter is to be reconsidered by another member of the IAD in accordance with these reasons.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7840-19

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