

Federal Court



Cour fédérale

Date: 20210716

Docket: IMM-2628-20

Citation: 2021 FC 749

Ottawa, Ontario, July 16, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

AMBREEN MANSOOR MILAK

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Immigration Appeal Division, Immigration and Refugee Board of Canada [the “Panel”], dated March 15, 2020, dismissing the Applicant’s appeal of the refusal of her spouse’s permanent residence application [the “Decision”].

II. Background

[2] The Applicant, Ambreen Mansoor Milak, is a Canadian citizen, born and raised in Pakistan. She initially came to Canada in 1994. The Applicant is 50 years old and has three children from the first of two previous marriages.

[3] The Applicant claims her spouse initiated contact with her in 2015 over Facebook. He is 24 years old and currently attending university in Pakistan. He has never previously been married and does not have any children.

[4] The Applicant's spouse initially posed as a woman on Facebook, when initiating contact with the Applicant, but later revealed himself to be a man. The couple continued their communication and the Applicant's spouse proposed marriage in April of 2016. The Applicant waited a few weeks before agreeing to marry him.

[5] The Applicant travelled to Pakistan for 10 days to meet her spouse for the first time in person and to marry him, which occurred on September 24, 2016. Both the Applicant and her spouse's families were largely against the relationship, but this did not deter the couple. While her spouse's father and uncle witnessed their wedding, his mother remained opposed to the marriage.

[6] The Applicant filed a sponsorship application for the permanent residence application of her spouse, under the family class – spousal category.

[7] The permanent residence application was refused on May 2, 2019, pursuant to subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the “*Regulations*”]. The Migration Officer was not satisfied that the marriage was genuine or that it had not been entered into primarily for acquiring permanent residence in Canada.

[8] This refusal then was appealed to the Immigration Appeal Division and dismissed by way of the Decision, dated March 15, 2020. The Panel found that the Applicant had failed to establish, on a balance of probabilities, that her marriage to her husband is genuine.

[9] The Applicant seeks an Order setting aside the Decision and referring the matter back to the Immigration Appeal Division for re-determination.

III. Decision Under Review

[10] The Panel stated in the Decision:

[13] This couple’s story is nothing short of peculiar. Given the odd way it began, the huge gap in how their relationship developed, the strong opposition from both of their families and how their relationship was concealed from the community, one would expect that they could explain in detail and with clarity how their marriage is genuine. I acknowledge that the applicant was relatively well versed about the appellant’s life in Canada and he knew many more details about her children than he did during his interview with the visa officer. The appellant was clear that their relationship was not accepted by most of the family and this is why she attempted to hide her marriage from her children and her siblings prior to the wedding. Counsel for the appellant cautioned the Member not to judge a person’s decision-making because some people make decisions in life that make little sense to others. Nevertheless, it is the appellant’s onus to explain why she made the decisions that she did. The applicant’s testimony was of little

assistance because for many questions, he failed to answer questions directly.

[11] The Panel did not find the couple's story credible, questioning how the spouses met, given the lack of communication records. The Panel found that the Applicant's spouse had failed to provide sufficient reasons as to why he initially contacted the Applicant and pursued the relationship. The spouses failed to provide clear evidence as to how the relationship developed and the Panel did not find it credible that the spouses began sharing their life's past experiences and fell in love online within five or six months.

IV. Issues

[12] The issue is whether the Decision was unreasonable in that the Panel ignored material and relevant evidence or relied on insignificant discrepancies and misconstrued the evidence.

V. Standard of Review

[13] The standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]).

VI. Relevant Provisions

[14] Subsection 4(1) of the *Regulations* provides that:

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.

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.

VII. Analysis

A. *The Parties' Positions*

[15] The Applicant alleges that the Panel engaged in a microscopic analysis, focusing unduly on inconclusive matters, while minimizing material evidence and basing findings on personal judgments. The spouses' relationship transpired in an organic and genuine manner. There was nothing unreasonable about the spouses' explanations in response to the Panel's concerns regarding the genesis and development of the relationship. The Panel's negative assignment of weight to the spouses' failure to provide communication records is unreasonable in light of the totality of the evidence, which supports the genuineness of the marriage. The Panel further

committed a logical fallacy in finding that the failure of the Applicant to introduce her children to her spouse is an indication that the marriage is not genuine.

[16] The Respondent argues that the Applicant has failed to demonstrate any sufficiently serious shortcomings with the Panel's analysis or reasons to warrant this Court's intervention. The Applicant is asking the Court to conduct a *de novo* review of the evidence to arrive at a different conclusion.

[17] A reasonable decision is based on an internally coherent and rational chain of analysis, justified in relation to the facts and the law that constrain the decision maker (*Vavilov*, above at para 85). Absent exceptional circumstances, a reviewing Court will not interfere with the factual findings of a decision maker, who must assess and evaluate the evidence before it. It is not the role of a reviewing Court to reweigh and reassess the evidence (*Vavilov* at para 125). While I note the Applicant's concerns with the Panel's assessment of the evidence, this is not a case where the decision maker has fundamentally misapprehended or failed to account for the evidence before it (*Vavilov* at para 126). The Panel comprehensively assessed the circumstances of the spouses, including the non-exhaustive list of factors enumerated in *Chavez v Canada (Minister of Citizenship & Immigration)*, [2005] IAAD No 353 (IAD) at paragraph 3.

[18] The Applicant has failed to demonstrate that the Decision lacks the requisite degree of justification, transparency and intelligibility.

B. *The Development of the Spouses' Relationship*

[19] The Decision bears the hallmarks of reasonableness in that the Panel undertook a comprehensive review of the record in reaching its finding of non-genuineness of the marriage (*Vavilov* at para 99). The Panel paid due regard to the consistencies in the testimony of the Applicant and her spouse and to her spouse's knowledge of her life in Canada. The Applicant and her spouse either failed to explain or provided unclear or vague explanations as it relates to the pursuit and development of their relationship. The Panel found that aspects of the narrative made "little sense" and the Applicant's arguments fail to undermine this analysis.

[20] The Court has held at paragraph 6 of *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 that the genuineness of personal relationships can be difficult to assess from the outside.

[21] The Applicant picks apart the findings of the Panel as it relates to the initiation and development of the relationship between the spouses. While I agree with the general principles cited by the Applicant, those principles do not apply here such that the Decision is unreasonable. I do not find that the Panel relied unduly on the incompatibilities of age and marital history between the spouses in rendering the Decision (*Nguyen v Canada (Citizenship and Immigration)*, 2020 FC 432 at para 16 [*Nguyen*]). In fact, the Panel stated: "I acknowledge that many marriages involve people who are not close in age".

[22] The facts of this case are further distinguishable from those in *Nguyen*, where this Court found that it was of concern that the Immigration Appeal Division failed to explain how "the

genesis of a relationship” was significant in that particular appeal. The marriage at issue in *Nguyen* was one “of ten years, after knowing each other for six years, and with two children born of that marriage” (*Nguyen*, above at para 17). The Panel is not unreasonable for questioning the initiation and development of the relationship between the spouses in this case.

[23] Further, the Panel did not require the spouses to “like the same genres of movies” as alleged by the Applicant. There was no error in the Panel’s remark that the Applicant’s testimony that the spouses like to watch movies was the extent of her testimony with regards to the spouses’ common interests.

C. *Lack of Communication Records*

[24] With respect to the lack of communication records, the Applicant argues that the Panel’s negative assignment of weight was unreasonable, in light of the “consistent and uncontradicted oral testimony regarding their ongoing contact with each other, their knowledge of each other’s lives and affection for each other throughout their relationship”.

[25] A reviewing Court must not reweigh the evidence in such a manner as requested by the Applicant. There was no error in the Panel’s finding that the spouses’ story “makes little sense” as it relates to the lack of communication records. The Applicant provided several reasons for failing to produce the records. The alleged destruction of her spouse’s phone and her difficulty downloading past conversations did not make sense in light of the Applicant’s ability to download and disclose Facebook conversations they had on April 3 and April 6, 2015.

D. *Lack of Support from the Applicant's Children*

[26] I also do not find that the Panel erred in its consideration of the Applicant's lack of effort to introduce her children to her spouse. While the Applicant did not assert that her children need to accept her future partner, this is not a basis to undermine the Panel's Decision. It was open to the Panel to find that the Applicant's "...lack of effort to introduce her children to the applicant [her spouse] and pave the way for a long-lasting relationship between them is an indication that the marriage is not genuine".

[27] This is but one factor considered by the Panel and when viewed contextually, it was not unreasonable.

[28] While the Applicant argues that the Panel imposed "Western centric values" and a microscopic analysis of the evidence, I disagree that the Officer imposed a subjective view on the evidence based on the Officer's cultural background. I note the Panel does draw negative inferences from the following:

- A. The Applicant agreed to spend time at her spouse's family home after the marriage;
- B. Her spouse failed to ask about his wife's feelings about staying at his family home shortly after the marriage;
- C. The control exerted on her spouse by his family is inconsistent with someone who defied his family's wishes; and
- D. Her spouse's mother was present to greet the Applicant upon her arrival to Pakistan in 2019, despite being opposed to the marriage.

[29] These findings were not unduly emphasized by the Panel and were viewed in light of an overall global assessment of the evidence, including the Panel's concerns with the credibility of the initiation and development of the spouses' relationship. The Applicant's narrow focus on these findings as problematic is not supported by the record and the Decision as a whole. This falls short of satisfying this Court that sufficiently serious shortcomings exist in the Decision, such that it cannot be said to exhibit the hallmarks of reasonableness (*Vavilov* at para 100).

VIII. Conclusion

[30] For the reasons above, this Application is dismissed.

[31] There is no question for certification.

JUDGMENT in IMM-2628-20

THIS COURT'S JUDGMENT is that:

1. This Application is dismissed; and
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2628-20

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